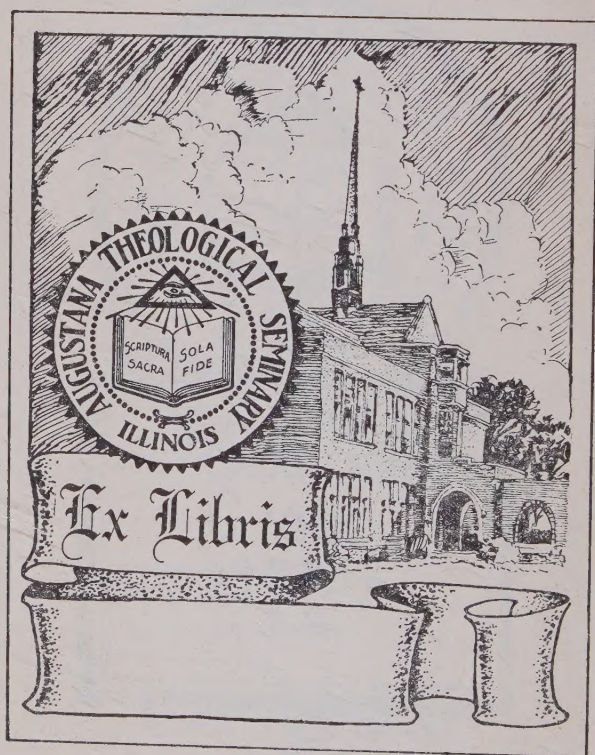


JKM LIBRARY



3 9967 00330 7985



COMMENTARIES
ON THE
LAWS OF MOSES.

BY THE LATE
SIR JOHN DAVID MICHAELIS, K.P.S. F.R.S.

PROFESSOR OF PHILOSOPHY IN THE UNIVERSITY OF GOTTINGEN.

Translated from the German,
BY ALEXANDER SMITH, D.D.

MINISTER OF CHAPEL OF GARIOCH, ABERDEENSHIRE.

IN FOUR VOLUMES.

VOL. II.

Libera Veritas.—MICHAELIS' MOTTO.

LONDON:

PRINTED FOR F. C. AND J. RIVINGTON, 62, ST. PAUL'S CHURCH-YARD;
AND LONGMAN, HURST, REES, ORME, AND BROWN,

PATERNOSTER-ROW;
AND A. BROWN & CO. ABERDEEN.

1814.

BM646

M53

1814

vol. 2

BM

646

M 6213

1814

vol. 2

D. CHALMERS & Co.
BOOK Printers, Aberdeen.

SEWING MACHINE

UNIVERSITY MICROFILMS

JKM Library
1100 East 55th Street
Chicago, IL 60615

ANALYSIS

OF

VOLUME SECOND.

BOOK III.

PRIVATE LAW CONTINUED.

CHAP. V.—Of Polygamy.

§ 1. ART. XCIV.

The Mosaic Laws permitted more than one Wife. P. 1—7.

Polygamy in use among the ancestors of the Israelites; ex. Abraham and Jacob, p. 1.—also after Moses' time; ex. Gideon, Jair, Ibzan, Abdon, Caleb, (1 Chron. ii. 18) Manasseh, Shaharaim, Joash, &c. p. 2, 3.—very common; proved from the number of the first-born, p. 4, 5.; from the law of Exod. xxi. 9, 10. p. 6.; and from the prohibition in Lev. xviii. of marrying a wife's sister, p. 6.—Notice of *Premontval's* Letters on Monogamy.

§ 2. ART. XCV.

Moses was, notwithstanding, no favourer of Polygamy, but merely tolerated it on account of the hardness of the people's hearts. P. 7—12.

Natural proportion of the sexes equal; Adam had only *one* wife; so also Noah's sons but one each, p. 8.—Moses prohibited eunuchism, which is indispensable to polygamy, p. 9.—He also, *in effect*, prohibited favouritism and seraglios, or state-polygamy, p. 10, 11.—The law of Lev. xv. 18. counteracted polygamy, p. 11.—Its decrease proved from Prov xxxi. 10—31. and Hos. iii. 2. p. 11, 12.—It ceased after the captivity, p. 12.

§ 3. ART. XCVI.

A Closer Investigation of the Reasons which might determine Moses not to prohibit Polygamy. P. 12—19.

Montesquieu's error as to more females being born in Asia than males, p. 14 —The reverse found in Minorca by Armstrong, p. 14.—Moses found polygamy among the Israelites, p. 15.—Difficulty of eradicating inveterate customs, ib'.—Whether climate had any effect, p. 16 —Early puberty in southern countries, p. 16, 17.—War law respecting female captives, p. 17.—Purchase of Arabian girls, p. 18.—Reference to Captain Niebuhr's and Mr. Wood's accounts of Arabian poverty, p. 18.

§ 4. ART. XCVII.

Limitation of Polygamy—Moses allowed more than one Wife, but prohibited many; that is, probably, more than four. P. 19—21.

This presumable from Jacob's case; from the Arabian custom, as sanctioned by Mahomet; and from the Talmud, and doctrine of the Rabbins, p. 19, 20 —Moses prohibited the future king of Israel from having many wives, p. 19.

CHAP. VI.—Certain Peculiarities relative to Marriage among the Israelites. P. 21.

§ 1. ART. XCVIII.

Of Levirate-Marriage, that is, the Marriage of a Childless Brother's Widow. P. 21—33.

Etymology of the term *Levirate*, p. 21.—Etymology of *יבום*, and most other Hebrew law-terms, unknown, p. 22.—The Levirate-law very early in Palestine; story of Tamar, p. 23.—Origin of the law unknown, till lately illustrated by *Süssmilch* and *Euler*, from the information of the Russian generals respecting the Mongols, p. 24—27.—Mongols not descended from the ten tribes, p. 25.—Strange custom among them, p. 26.—Progress of the law traced, p. 27, 28.—a hardship on men, and unfavourable to female morals, p. 28, 29.—Moses'

plans for obviating its evils, p. 29, 30.—Ceremony of the shoe; the widow did not spit in the refuser's face; criticism on וירקה בפניו, (Deut. xxv. 9.) p. 30, 31.—Whether *brother* (Deut. xxv. 5—10.) means, as some have maintained, only *a relation*, p. 32.—Where no brother, or when he declined, the law extended to the next kinsman, p. 32.—Case of Ruth, p. 28, 32.—No Levirate-marriages among the modern Jews.

§ 2. ART. XCIX.

Of Marriage with a person of inferior rank; and of the Restraints laid upon Priests, in regard to the circumstances of the Wives whom they might marry. P. 33—35.

Equality of rank in marriages disregarded in the East, p. 33.—Reason of the difference of Oriental and Occidental manners here, p. 34.—The Mosaic statute respecting the marriage of priests, *ib.*—The law stricter in Ezekiel's time, p. 35.

§ 3. ART. C.

An Israelite might marry out of his tribe; he might even marry a Heathen Woman, if not a Canaanite. P. 36—38.

Fallacy of the contrary opinion proved from Numb. xxxvi. and Deut. xxi. 10; and from the relationship of Mary and Elizabeth, p. 36, 37.—Origin of it, p. 36.—Only one exception, where an heiress, *ib.*—Why marriages with Canaanitish women forbidden, p. 37.—Why Solomon censured for marrying heathens, p. 38.

CHAP. VII.—Of Marriages betwixt Near Relations.

§ 1. ART. CI.

General Remarks on the present application of the Mosaic Laws to the Marriages of Near Relations. P. 39—46.

Reference to a particular Dissertation, by the Author, on this subject, p. 39.—Mosaic marriage-laws still in so far valid among *Protestants*, p. 40,—The Pope can dispense with them, by the decision of the council of Trent, p. 41.—Case of Henry VIII. and the conse-

quences of the Pope's conduct, p. 42.—The Author's opinion of that case, *ib.*—Different interpretations of the Mosaic statute; 1. Some think no marriages forbidden, but those expressly mentioned by Moses, *ib.*—2. Others favour the doctrine of forbidden degrees, p. 43.—3. Others (*Baumgarten* and the Author) regard some of the prohibitions as moral and indispensable, but others as only civil and dispensable, p. 44.—How sovereigns should act on this principle, p. 45.

§ 2. ART. CII.

Of certain Words and Expressions used by Moses, in his Laws on the subject of Marriages among Relations. P. 46—52.

Uncovering nakedness, p. 47.—שאר בשר, p. 48, 49.—זמה, p. 50.—נדה, חסד, תבל, p. 51.

§ 2. ART. CIII.

What we must presuppose in our investigation of the Reasons for which Moses prohibited the Marriages of Near Relations. P. 52—54.

Moses nowhere explicitly mentions what he disapproved in them; but only gives us to understand, in general, that they were so sinful, that God could justly punish the Canaanites on account of them.—The Canaanites, of course, must have been conscious of their sinfulness; and therefore Moses prohibited them, as violations of the laws of universal natural morality, and not from mere political expediency, p. 53.

§ 4. ART. CIV.

Horror naturalis is neither the cause of the disallowance of such Marriages in general, nor of the Mosaic Prohibitions in particular. P. 54—56.

The doctrine of *Horror naturalis* contrary to the feelings of nature, and to the evidence of the history of nations, both civilized and savage, p. 55.—That Moses had no idea of it, is clear from his account of the first pair, p. 56.

§ 5. ART. CV.

Whether the Children of such Marriages do physically degenerate. P. 56—62.

The hypotheses of *Buffon* and *Hutcheson*, deduced from the supposed degeneracy of horses bred from parents too nearly connected, unfounded, and at any rate inapplicable here, p. 56—58.—No corporal degeneracy among the Egyptians, Persians, Grecians, &c.; and Moses testifies that the Canaanites were of gigantic stature, p. 59.—Objection, from the state of the Americans on their first discovery, examined, p. 60, 61.

§ 6. ART. CVI.

The object of the Prohibitory Statutes was neither, (1.) to promote the closer union of Mankind at large, by the means of Marriage; nor yet, (2.) to prevent the excessive power of particular Families. P. 62—64.

They allowed the marriage of cousins-german, which, as Moses knew, had likewise been usual among the ancestors of the Israelites: hence they must have proved quite inadequate to the *first* purpose, p. 63.—Families gain *nothing* by marrying within themselves, but *much* by intermarriages with other families; and Moses obliged heiresses to marry within their own tribe, which shews he had not the *second* object in view, p. 63.

§ 7. ART. CVII.

Concerning Respectus Parentelæ. P. 64—68.

Respectus Parentelæ explained, p. 64.—Never insinuated by Moses as a ground of his prohibitions, *ib.*—At any rate, only the voluntary abandonment of a natural right, p. 65.—Children often placed above their parents; Joseph, David, Saul, p. 65, 66.—Sovereigns also marry subjects; Queen Anne, p. 66.—Marriage of a stepmother prohibited; yet no feeling of *Respectus Parentelæ* could operate there, p. 67.—Only in one rare case, and while parents were alive, could it operate, as a *concurring* cause of prohibition, p. 68.

§ 8. ART. CVIII.

The true cause of the Prohibition is, that without it, Whoredom, and early Corruption in Families, cannot be prevented. P. 68—77.

Dangers of free intercourse between brothers and sisters, if incestuous marriages allowed, p. 68.—Seduction, under the hope of mar-

riage, *ib.*—Its dreadful consequences, particularly in early youth, p. 69, 70.—Effects of tolerating marriages between parents and children, p. 71.—Importance of female virtue to society, p. 72.—Consequences of a prevalent disregard to it, p. 73.—Divorce, poisoning, *Lues*, &c. and national ruin, p. 74.—These the causes of the Mosaic prohibitions, p. 75.—Why incest not sinful at first, p. 75.—and only when it becomes national, p. 76.

§ 9. ART. CIX.

Wherefore Moses has prohibited some other Marriages, besides those between Parents and Children, Brothers and Sisters? P. 76—82.

The intercourse even between cousins gives opportunities of corruption; and by the ancient Roman law they were interdicted from marrying, p. 77.—Much here depends on national customs; the right of kissing among the Romans; the use of the veil among the Hebrews and Arabs, p. 78.—Mahomet's rules of wearing the veil agree exactly with the Mosaic prohibitions, p. 79.—excepting in the case of the brother's wife, p. 80.—Yet Moses prohibited that marriage, (excepting where the Levirate-law operated,) because of the danger of such a reversionary right, p. 81.—and, for the same reason, he prohibited marriage with a paternal uncle's widow, p. 81.

§ 10. ART. CX.

The Consuetudinary Laws of the Israelites on this subject, before the time of Moses.—His two Statutes. P. 82—84.

Not all the prohibited marriages previously lawful; Abraham would not have married his uterine sister, p. 82.—Commerce with a daughter unknown even in Sodom, p. 83.—Circumstances of Moses' parentage, p. 83.—His first statute contains only prohibitions; the second specifies the punishments, p. 83.—What these were, p. 84.

§ 11. ART. CXI.

Moses declares the prohibited Marriages, Abominations, and Sins for which God punished even other Nations; and therefore morally wrong. P. 84—88.

Moses, as an inspired prophet and moralist, declares the Canaanites just objects of the divine wrath for their incestuous marriages, and other abominations, p. 85.—An illustration of Lev. xviii. p. 86.—Its general introduction; its detail of prohibitions; and its conclusion, as referring to the *whole*; and not, as some say, only to those of adultery, &c. immediately preceding, p. 87.—The Egyptian theology also countenanced incest; Marriage of Osyris and Isis, p. 87.—The above illustration confirmed by Lev. xx.

§ 12. ART. CXII.

Whether Moses is to be understood as declaring all the Marriages that he forbids, or those only of the very nearest Relations, to be morally evil, and to constitute the abomination of the Egyptians and Canaanites. P. 88—95.

The prohibited marriages of two classes; the *first*, indispensable and abominable; the *second*, those more remote, less dangerous, and dispensable, p. 89.—The latter, from difference in national customs, not so determinable as the former, *ib.*—Marriage with a foster-sister prohibited in Arabia, and why, *ib.*—Moses punishes those of class first with *death*, but those of class second, only with civil penalties, p. 90.—The former alone constitute the Canaanitish abominations; *five* proofs of this, p. 90—92.—Allowing those of class second to be *abominations* also, still the prohibitions affect not us; this is *Baumgarten's* doctrine, and the Author's, p. 93.—List of marriages in the two classes; *One* marriage of an intermediate nature, p. 94.

§ 13. ART. CXIII.

Prohibited Marriages of Class First; viz. those between Parents and Children, and between Step-Parents and Step-Children; or Parents-in-law and Children-in-law. P. 95—103.

The marriage of a father with a daughter not directly mentioned, and why, p. 96 —With an uterine mother, p. 98.—With a step-mother; case of Reuben and Absalom, p. 99 —This, the marriage reprobated by St. Paul, 1 Cor. v. 1—5.—Jewish abuse of proselyte-baptism, p. 100 —With a grand-daughter, *ib.*—With a mother in

law, step-daughter, &c. p. 101.—The latter common in some parts of Germany, and ought to be prohibited, p. 102.

§ 14. ART. CXIV.

Of the Prohibition of Marriage between Brothers and Sisters P. 103
—107.

It extends to step-sisters as well as uterine; Criticism on *Bohl's* translation of מולדת, p. 103.—There, stricter than the previous usage, from Abraham's example, and why, p. 104.—An attempt to clear up the difficulties of Lev. xviii. 11. respecting marriage with a step-daughter, p. 101—103.

§ 15. ART. CXV.

Whether, in Lev. xviii. 11. the Marriage of Step-Sons with Step-Daughters be prohibited. P. 107—111.

An account of *Samuel Bohl's* treatise and doctrine on this point, p. 108.—He followed *Raschi*, *Menochius*, and *Cramer*, p. 109.—Why his adversaries could not answer him, *ib.*—Yet easily answered upon his own grammatical principles, p. 110.

§ 16. ART. CXVI.

Of the Marriage of Relations less near than those already mentioned. P. 112—117.

1. With a father or mother's sister, prohibited, p. 112.—With a deceased wife's sister, permitted, but *simultaneous marriage of sisters* prohibited, and why, p. 112, 113.—With a deceased brother's widow prohibited, unless childless, p. 114.—With a paternal uncle's widow, p. 115.—True meaning of ערירי, p. 114, 115.—With a deceased wife's stepmother not prohibited, and why, p. 117.

§ 17. ART. CXVII.

Only those Marriages are prohibited, which Moses has expressly specified, and not others, though in like degrees of affinity. P. 117—122.

The doctrine of forbidden degrees, p. 117.—The *six* marriages not mentioned by Moses, p. 118. not prohibited; for *four* reasons,

p. 118—122.—In the East a niece more distant than an aunt, and how, p. 120.—Marriage with a deceased wife's sister permitted; but not with a brother's widow, p. 122.—Decisive arguments these, against the *consequential* system.

CHAP. VIII.—Of Cohabitation, Divorce, and Provision for Widows.

§ 1. ART. CXVIII.

Laws respecting Cohabitation. P. 123—127.

State of the case in monogamous countries, p. 123 —Different in polygamous; the Turkish law, as stated by *Motraye*, p. 124.—The Mosaic regulation deducible from Exod. xxi. 10, 11,; absurdly expounded by some, both Jewish and Christian, commentators, p. 125.—Rabbinical conceits on this subject, p. 126.—Important remark from Levit. xv. 18., p. 127.

§ 2. ART. CXIX.

Concerning Divorce. P. 127—140.

Moses regarded divorce as sinful; remark on Gen. ii. 24., p. 127.—The statute of Deut. xxiv. 1—4 *properly* translated, p. 128.—Error of *Luther's* and other versions, p. 129.—Distinction of *Divortium* and *Repudium*, p. 129.—Moses does not speak of *judicial*, but arbitrary divorce; authorised, however, by consuetudinary law, p. 129, 130.—Error of commentators, from confounding these different things, p. 130, 131.—A judicial divorce for whoredom impossible, p. 131.—Dispute between the schools of *Hillel* and *Shammai*, p. 132.—Divorce-law of the Koran, p. 133, 134 —Arabian divorce *oral*, and often irrevocable, p. 134.—The Mosaic regulations required *writing*, and were otherwise calculated to obstruct divorces, by creating delay, giving time for reconciliation, &c., p. 135—137.—The re-union of the parties impossible, if the woman had married another husband, and why, p. 137.—The Mahometan law absurdly the reverse, p. 138.—The right of divorce how forfeited, p. 139.

§ 3. ART. CXX.

The Disputes between the Schools of Hillel and Shammai, on Divorce. The Decision of Christ on the Subject, with its application to our Christian Marriage Laws. P. 140—154.

Notice concerning Selden, *De Uxore Hebraica*, p. 140.—Hillel's doctrine stated and examined, p. 141.—Shammai's, p. 142.—Remark on ערוה, p. 142.—Christ's decision, and limitation of divorce, p. 143.—Eight supposed omissions in it, stated and accounted for, p. 144—147.—If divorce allowable for a wife's mismanagement, p. 146.—English law relative to a wife's debts, p. 147.—Christ's doctrine does not absolutely prohibit magistrates from granting a divorce on other grounds, besides those specified in the New Testament, p. 148.—Yet frequency of divorce a great evil; as exemplified in Rome, p. 149.—Our Christian divorce law unwarrantably requires a proof rarely attainable, p. 150.—A curious case proposed to a Consistory, p. 151.—Their decision right; its ground wrong, p. 151, 152.—Shrewd conjecture of Sir John Pringle, relative to *περυσιας*, Matth. v. 32. p. 153.

§ 4. ART. CXXI.

Of Provision for the Wife after the Husband's Death. P. 154.

If she had *no* children, the Levirate law secured this; if she had, it was left to filial duty. Among the Arabs, secured by marriage-contract, p. 154.

CHAP. IX.—Laws respecting Slaves and Servants.

§ 1. ART. CXXII.

Moses permitted Slavery, which was already in Use; but he did so under certain Limitations. P. 155—158.

Slavery before Moses' time subsisted among the Israelites and the neighbouring nations, p. 155.—Its advantages and evils stated, p. 156, 157.—Moses permitted, but restricted it, p. 157.

§ 2. ART. CXXIII.

Of the Different Ways in which people acquired, or became, Slaves.
P. 158—164.

I. War; circumstances relative to the Hebrew war-laws, p. 159.
II. Purchase, of which *four* kinds (1.) Transfer of servants; meaning of מכרת כסף; sale of the 32,000 Midianitish virgins, p. 160.—(2) Self-sale from poverty, p. 160.—(3.) Sale of children; remark on the story of the two harlots, 2 Kings iii p. 161.—Common fate of illegitimate children, and evils of foundling hospitals, p. 162.—(4.) Sale of debtors and their families, p. 162.—III. The marriage of slaves; *Contubernium* as distinguished from *Conjugium*, p. 163.—Slaves born in the house; Abraham's 313, p. 164.

§ 3. ART. CXXIV.

Two Laws relative to the Value of Slaves. P. 164—169.

The value of slaves variable, depending on various circumstances, p. 164.—and, therefore, a medium rate fixed by Moses only in two necessary cases; *first*, where killed by a pushing ox, p. 165.—*secondly*, where, after devotement to the sanctuary, a release was wished for, p. 166.—Here the appretiation made, in *five* different rates, according to age and usefulness, p. 167.—This first application of the *laws of mortality*, stated and illustrated, p. 167—169.

§ 4. ART. CXXV.

Mancipia Publica et Sacra. P. 169, 170.

Slaves of this description before Moses, p. 169.—Of the 32,000 Midianitish virgins, 352 became slaves to the sanctuary, p. 170.—So also the Gibeonites; who were termed גִּבְעוֹנִים, and why; and so Samuel, ib.

§ 5. ART. CXXVI.

Of the Property which the Hebrew Servant might possess—the Right a Master had to beat his Slaves—its Limitations—and the Manumission of Slaves. P. 170—173.

The Hebrew servant might have property and even slaves, ex. *Ziba*, and purchase his freedom, p. 171.—The master had a right to *beat* his slave, but not to *kill* or *maim* him, p. 172.—The consequence of so doing, *ib.*—Manumission; meaning of חפשי, p. 173.

§ 6. ART. CXXVII.

Of the Privileges of the Hebrew Servant, and his Manumission in the Seventh Year. P. 175—182.

Distinctions between a foreign and a Hebrew servant; sense of עבד, p. 175, 176.—Two periods of freedom to the latter, the *seventh* year and the *fiftieth*, p. 176, 177 —Boring the ear; Moses wished to discourage it, and why, p. 178.—Gratuities given to servants on dismissal, p. 179.—Difference between the statutes of Exodus and Deuteronomy not a contradiction; the latter an amendment of the former, p. 180.—The rights of the Hebrew servant afterwards infringed, p. 181.—Curious fact from Jeremiah, p. 182.

§ 7. ART. CXXVIII.

Other Statutes relating to Slaves—their Circumcision, &c. P. 182—184.

Circumcision of foreign slaves enjoined; but it did not imply conversion, p. 183.—The Sabbatical rest extended to slaves, p. 184.—Slaves invited to the offering feasts, p. 184.

§ 8. ART. CXXIX.

Concerning Day Labourers for Hire. P. 185, 186.

They shared in the Sabbatical rest, and their hire was to be *daily* paid; but Moses does not fix it, and why; in Christ's time it was a *Denarius*, p. 185.—Story from the Talmud, of the manner in which the Jews parried the claim of the Egyptians for the vessels carried off from their ancestors, p. 186.

§ 9. ART. CXXX.

The Ox, when threshing, not to be muzzled—a Statute, which, besides its literal meaning, implied also, that Servants employed in the preparation

of Victuals and Drink, were not to be prohibited from tasting them.
P. 186—191.

Ancient Oriental mode of threshing with oxen, still the same at Aleppo, and in Malabar, p. 187.—Gratitude to the ox for his aid, p. 188.—Cruelty and evils of tantalizing servants, p. 188, 189.—Curious passage from Job and the Talmud, p. 190.—Hirelings here on a footing with servants, p. 191.

CHAP. X.—Of the Laws respecting the *Goël*, or Blood-avenger.

§ 1. ART. CXXXI.

Of the Hebrew and Arabic Names of the Blood-avenger. P. 192—195.

Luther's happy appellation of this personage and his office, p. 192.—Meaning of the term גֹּאֵל (*Goël*) ; a conjecture of the Author's, p. 193.—The Arabian term *Tair*, equivalent to the Latin *Superstes*, p. 194.—In Syriac no proper name for him, and whence this, ib.

§ 2. ART. CXXXII.

Origin of the Goël from the State of Nature. P. 195—197.

Nations in their infant state all similar ; necessity of making blood-avengement a common cause, where no laws to punish murder, p. 195.—The duty naturally devolved on the family of the murdered, p. 196.—Practice of the Caribs here actually the same as that of the Hebrews and Arabs, p. 196.—Commandment, concerning murder, given after the flood, commonly misunderstood, p. 197.

§ 3. ART. CXXXIII.

Of the Mischievous Consequences which, in process of time, may, and, in fact, generally do, ensue from the Law of the Blood-avenger. P. 198—201.

Danger to the innocent, from his impatience to be revenged, p. 198.—and from his disdaining to inquire into circumstances, p. 199.—The

cause of family feuds and murders for many generations, p. 200.—Hence the necessity of judicial trial and punishment, p. 201.

§ 4. ART. CXXXIV.

Description of the Tair, or Blood-avenger among the Arabs. P. 202—214.

This description applicable to *Arabia Petraea* and *Deserta*, but not to *Arabia Felix*, and why, p. 202.—Revenge a noble virtue among the Arabs, p. 203.—The great theme of their finest poems, p. 204.—Yet their vindictive artifices very mean, p. 205.—Story of *Kais*, p. 206—209.—and very cruel; Story of *Muharrrik*, p. 209.—Mahomet's injudicious plan for mitigating their revenge, p. 210, 211.—*Chardin's* account of the effect of his law in Persia, p. 212.—*Arvieux's*, of its non-effect among the Arabs in Palestine, p. 213.—

§ 5. ART. CXXXV.

Comparison between Arabian Blood-avengement and European Duelling. P. 214—219.

Duelling allowable and magnanimous in a state of nature, and far preferable to Arabian blood-avengement, p. 215.—Both ought to cease in a state of society, p. 216.—The difficulty of putting a stop to them; prohibitions ineffectual, even though sanctioned with death, as by Louis XIVth's plan, p. 217.—or by a *stigma* of infamy, p. 218.—Wisdom of Moses' procedure, p. 219.

§ 6. ART. CXXXVI.

Of the Procedure of Moses with regard to the Rights of the Goël P. 219—228.

The *Goël* frequently mentioned by Moses, otherwise than as an avenger, p. 219.—In Job, God compared to him, p. 220.—*Goëlism* presupposed in Exod. xxi. 12., ib.—*Goël* first spoken of as avenger in Numb. xxxv. 12.; Rebecca apparently afraid of him, p. 221.—Moses appoints six cities of refuge, p. 222.—Orders the roads to them to be kept in order, ib.—Real murderers not protected, p. 223.—Only the man-slayer, and until the high-priest's death,

p. 224.—Retaliation of murder thus prevented, p. 225.—But *one* instance of the abuse of *Goëlism* (Joab), p. 226.—David *Goël* to Saul, Jonathan, and Ammon, p. 226, 227.—The *Goël* prohibited from compounding for blood, p. 227.

§ 7. ART. CXXXVII.

Of the other Rights of the Goël; and concerning Guardians. P. 228—230.

The right of redeeming his kinsman's land; and of having restitution made to him, as nearest heir, p. 228.—*Miggoël*, who? *ib.*—Guardianship usufructuary among the Arabs, *ib.*—Nothing of guardians in Moses; *Mordecai* not *Esther's* guardian; real sense of אמן; a mistake in *Luther*, p. 229.—The Vulgate version correct, p. 230.

CHAP. XI.—Laws respecting Strangers, Aged, Deaf, Blind, and Poor Persons.

§ 1. ART. CXXXVIII.

Of Strangers. P. 231—233.

Distinction between גר and תושב, p. 231.—Strangers classed with other objects of compassion, p. 232.—Israelites enjoined to treat them kindly, for various reasons, p. 232.—Under the same law as natives in most respects, p. 233.

§ 2. ART. CXXXIX.

Of Naturalization—Who might and might not receive the Rights of Citizenship among the Israelites. P. 233—239.

True meaning of entering the congregation of the Lord, p. 233.—Edomites and Egyptians naturalized in the *third* generation, p. 234.—Even Canaanites sometimes naturalized, *ex. Uriah*, p. 235.—Ammonites and Moabites, *never*; nor eunuchs, p. 235.—*Bastard* not meant by ממזר, or more properly, מז זר, p. 236, 237.—A conjecture by the Author's father, p. 238.

§ 3. ART. CXL.

Of the Veneration paid to Old Age. P. 239, 240.

Remark by *Montesquieu* ; Mosaic statute of Lev. xix. 32., p. 239.

§ 4. ART. CXLI.

Laws respecting the Deaf and Blind. P. 240, 241.

Malicious tricks common among the Israelites, p. 240.—Of different kinds in different nations, p. 241.—Statutes of Lev. xix. 4.; and Deut. xxvii. 18, p. 241.

§ 5. ART. CXLII.

Concerning the Poor—We must distinguish between Poor and Beggars—Moses never mentions the latter. P. 241—253.

The poor defined and described, p. 242.—Beggars, who? no objects of legislative concern, as poor, and why, p. 243.—A burden on the public; thieves; propagators of contagion, *e. g.* small-pox, p. 244, 245.—Trifling and indiscriminate alms useless; and not a Christian good work, p. 246—248.—Beggars not mentioned in the Old Testament; and if in the New Testament, certainly not strolling ones, p. 249.—Mosaic statutes inapplicable to beggars, *ib.*—Begging arises from great cities; Palestine then had none such, p. 250.—Israelites unlikely to beg, or to encourage beggars, p. 251.—Why begging so common with us, p. 252.

§ 6 ART. CXLIII.

Laws and Exhortations given by Moses, together with ancient usages in favour of the Poor. P. 254—262.

Moses expected that there would *always* be poor, p. 254.—Lending to the poor, p. 255.—Poor's right of gleaning, 256.—Noticed by Job, p. 257.—Similar right among the Arabs, *ib.*—Right to the produce of the Sabbatical year, p. 258.—To a share of the second tithes and firstlings; what these were? p. 258, 259.—*Joy* meant a *feast*, *ib.*—Humanity of this law, *ib.*—Christ at such a feast in a Pharisee's

house, p. 260. —The poor had a sort of right to feasts and presents from the rich, *ib.* —David's request to Nabal, and its result, p. 261.

CHAP. XII.—Of Personal Rights and Obligations.

PART I.—Of Vows.

§ 1. ART. CXLIV.

Of Vows in general, and considered as binding, and acceptable to God.
P. 263—269.

God's acceptance of vows not to be taken for granted, p. 263.—Many vows directly sinful, *e.g.* *Corban*, p. 264.—Many sinful, as being useless, *ib.* —Fasting, dress, p. 265.—Vows not obligatory under the New Test. and why, *ib.*—but binding on the Israelites, though neither enjoined nor encouraged, p. 266.—Probably a more ancient usage, *ib.*—A divine legislator alone can declare God's acceptance of vows, and obviate their evils, p. 267 —Different views of Protestants and Catholics on this subject, p. 268.

§ 2. ART. CXLV.

It is an essential requisite in a Vow, that it be orally expressed—The different sorts of Vows—Jephtha's Vow considered. P. 269—290.

Vows must be *orally* uttered, and not merely resolved on; the necessity of this distinction, p. 269.—to prevent tormenting thoughts of vows, p. 270.—blasphemous thoughts; *Xaldnipter*, p. 271.—Vow of *Cherem*, p. 272.—*Cherem* of a city, p. 273.—History of Jericho, and fulfilment of Joshua's curse, p. 274 —Saul's abuse of *Cherem*, p. 275.—Jephtha's still greater, p. 276.—His vow rash, absurd, unlawful, p. 277.—His daughter really sacrificed, p. 278.—An inadvertence of expositors, in their zeal to obviate difficulties here, p. 279.—Different vows of *dedication*, נדר, p. 280 —Vow of tithe, from Jacob's example, p. 281.—Vow of self-devotement, p. 282.—Devotement of children to God; Samuel, p. 283.—Vows of *self-interdiction*, אסר, *ib.*—Nazaritism explained, p. 284.—Probably prior to Moses, p. 285.—Not necessarily perpetual, *ib.*—Even Samson in so far deviated from it, *ib.*—No such thing as vows of virginity, p. 286.—Argu-

ments against nunnism and celibacy, *ib.*—Jephtha's daughter not made a nun, p. 288.—nor sent to the tabernacle, p. 289—Ideas these, unworthy of *Protestant* expositors, p. 290.—*Josephus'* testimony to the reality of the sacrifice, p. 290.

§ 3. ART. CXLVI.

Ordinances that lessened the inconveniences of Rash Vows. P. 291—293.

Vows remissible in certain cases; with whom the power of remission was lodged, p. 291.—Vows of wives and daughters, p. 292.—The priests had no interest in persuading the people to make vows, as they have in Catholic countries, p. 293.

CHAP. XII.—PART II.—Of Debts, Pledges, and Usury.

§ 1. ART. CXLVII.

General Remarks on the great Difference between our Laws, and those of the Israelites, respecting matters of Debt. P. 294—299.

The circumstances of the people different, p. 294—Poor; but all possessed of landed property, p. 295.—Loans, therefore, always safe, *ib.*—Justice likewise summary, p. 296.—No privileged orders, nor any encouragement to commerce, p. 297.—German debt-laws too mild; English, too severe, p. 298.—Imprisonment and slavery contrasted, p. 299.

§ 2. ART. CXLVIII.

Judicial Procedure in cases of Debt—Legal Execution, and its Objects. P. 300—311.

Moses adhered here to the law of usage, p. 300.—Describes, in *Job*, the abuses of justice, p. 301.—*Objecta Executionis*, (1.) Land, or rather crops, p. 302.—(2.) Horses; (3.) Clothes, p. 303.—Upper and under garment, p. 304.—Explanation of Matth v. 40.; *χιτων*, and *ιματιον*, p. 305.—(4.) The debtor's person and family attachable, p. 306.—Nehemiah's procedure, to relieve oppressed debtors, resembles the Roman *Novæ Tabulæ*, p. 307.—Christ's parable of the debtor sold, p. 308—(5.) Cattle; (6.) Furniture; (7.) Ornaments, p. 309.

—Ear-rings, &c. often superstitiously consecrated, or regarded as amulets, p. 310.

§ 3. ART. CXLIX.

Imprisonment not used to enforce Payment, and still less, Torture. P. 311—314.

Cruelty and absurdity of imprisonment for debt, p. 311.—Moses did not even punish crimes by imprisonment, p. 312.—If in use 1500 years after, that proceeded from the adoption of foreign laws by the Jews; Explanation of Matth. v. 26. xviii. 30. ib.—*Delivery to the tormentors* misunderstood; not a debtor, but a traitor, spoken of in that parable, p. 313, 314.

§ 4. ART. CL.

Of Pledge. P. 314—322.

Pledges should be under judicial regulations, to prevent extortion, p. 315.—Various extortions of lenders described by *Job*, p. 316.—Mosaic regulations; the creditor durst not enter the debtor's house, p. 317.—Prohibited also from taking or keeping, (1.) the upper garment in pledge, and why, p. 318.—The *Hyke* or *Simla* described, p. 319.—(2.) Mills or millstones, and why, p. 320.—In short, any article of indispensable necessity, p. 321.

§ 5. ART. CLI.

Of Suretyship. P. 322, 323.

Only *once* alluded to by Moses, though perhaps not unusual, p. 322.—Frequently, by Solomon; and the surety treated as a debtor, p. 323.—Dishonesty of rash suretyship, ib.—The hand given to the *debtor* in the creditor's presence, ib.

§ 6. ART. CLII.

Of the Equity of taking Interest, and the Reasons thereof. P. 324—326.

(1.) From the risk of the capital, p. 324 — (2.) From the borrower's advantage by it, p. 325.—(3.) From our own profit by employing it p. 326.

§ 7. ART. CLIII.

Two different sorts of Interest, or Usury; on Money lent, and on Produce lent.—Remarks on the latter. P. 327—332.

Usury on money (נשח) prohibited among the Israelites, p. 327.—Also, usury on produce, (מרבית). This not so unjust as it seems; if under proper stipulations, p. 328—331.—Roman law, therefore, here injudicious, p. 328—331.—*Per centage* first mentioned by Nehemiah, (מאה, *Centesimæ*), p. 331.

§ 8. ART. CLIV.

Moses permitted the taking of Interest from Strangers; but in his first Law prohibited the exaction of it from poor Israelites, and in that given forty years after, from Israelites in general P. 332—336.

His permitting it at all, a proof of its not being in itself unjust or sinful, p. 332—The suitableness of his *first* law to the *then* circumstances of the Israelites, p. 333—till defeated by the progress of wealth and chicane, p. 334.—which rendered the *second* absolutely necessary, p. 335.—Usurers condemned in the Psalms and Prophets, p. 336.

§ 9. ART. CLV.

Peculiar Circumstances in the Israelitish Polity, which made the Prohibition of Interest more equitable than it would be among us; or which politically recommended it. P. 336—347.

The prohibition among us would be ruinous, p. 336.—But (see Art. CLII.) the Israelitish creditor (1.) ran no risk, p. 337.—(2.) His debtors were generally poor; (3.) He could not himself invest money in land, p. 338.—The folly of urging the prohibition on us, under so different circumstances, p. 339.—The *monied* and *landed* interests, p. 340.—Purchase of land on redemption, p. 341.—Scotch wadsets, p. 342.—The laws of several ancient nations unjustly hostile to interest, p. 342, 343.—Importance of interest to modern commerce, p. 344.—Were the Israelites likely to lend to foreigners for the sake of interest? p. 345.—Anciently, loans to foreigners, lost in the event of a war, p. 346.—Whether Solomon, as a commercial prince, altered the Mosaic laws, p. 347.

§ 10. ART. CLVI.

A Loan regarded by Moses as an Alms-deed; of course, the subject of his Exhortations, but not of Legal Constraint. P. 347—353.

Illustration of Deut. xv. 7—10. דבר בליעל; and xxiv. 13. צדקה, p. 348.—To a poor man, a loan far more valuable than daily alms, p. 349.—But a legislator cannot force such loans, p. 350.—Moses therefore here only earnestly exhorts, with a promise of the divine blessing, p. 351.—This plan unsuitable with us, p. 352.

§ 11. ART. CLVII.

In the Seventh Year, a Debtor could not be sued or harassed, because there was no Crop. P. 353, 354.

This privilege reasonable; Remark on Deut. xv. 11. p. 353.—This passage generally misunderstood; Error in *Luther's* version, p. 354.

§ 12. ART. CLVIII.

Novæ Tabulæ. P. 354—363.

The Talmud erroneously asserts, that *all* debts were cancelled in the *seventh* year. p. 355.—Whether this were expedient, every 50 or 100 years, p. 356, 360.—If septennial, its effects ruinous, p. 357.—Moses vindicated, p. 358.—Meaning of שמיטה, in Deut. xv. p. 359.—Josephus' testimony considered, p. 361.—One instance of *Novæ Tabulæ*, viz. in Nehemiah's time, p. 362.—Nehemiah's disinterestedness, p. 363.

§ 13. ART. CLIX.

Of borrowed Beasts of Burden. P. 364.

CHAP. XII.—PART III.—Of Injuries done to the Property of others, and General Conduct in regard to it.

§ 1. ART. CLX.

Reparation of Injuries done to another's Property. P. 365—367.

Killing a beast of another man's, p. 365.—Damage by a pushing ox, p. 366.—by an uncovered pit; and by fire kindled in the fields, p. 367.

§ 2. ART. CLXI.

What was and was not permitted on another's Land—Eating of Grapes or Ears of Corn there, allowable; but not gathering them into a Vessel; nor yet feeding Cattle there. P. 368—372.

(1.) Corn, Deut. xxiii. 26; extent of the law, p. 368.—(2.) Grapes, Deut. xxiii. 25. This no hardship, where all had vineyards, p. 369.—Moses indulgent to the cravings of nature; Danger of thwarting them too much, p. 370.—(3.) Free pasturage prohibited, and why; מִיֶּטֶב, what? p. 371.

§ 3. ART. CLXII.

Of Things given to another in Trust. P. 372—375.

Different sorts of *Deposita*, p. 372.—Case of denial; when proved, p. 373.—If a deposit stolen, no restitution, p. 373.—לֹא אֶמָּן, a formula of an oath, p. 374.—If a beast hurt, driven, or stolen, or torn; Meaning of עָר here, p. 374, 375.

§ 4. ART. CLXIII.

The Laws respecting Things found. P. 375—378.

Restoration, on the principle of the tenth commandment; extent of that principle, p. 375.—A reference to the oath of the supposed finder, p. 376.—Duty, on finding a beast lying under his burden, even an enemy's beast, ib.—The humanity of the Mosaic law here, p. 377.—All Israelites conversant with the management of cattle, ib.

CHAP. XIII.—Obligations and Laws respecting Animals.

§ 1. ART. CLXIV.

Kindness and Compassion towards Animals in general. P. 379—385.

Why legislator should inculcate this? Its influence on manners and laws, p. 379.—Example; butchers hardened by dealing in blood,

p. 380.—The Author's feelings, on observing that the innkeepers in a certain part of Germany were all butchers, *ib.*—Butchers cannot serve as jurymen in England, p. 381.—Summary of the Mosaic statutes relating to animals, p. 382.—Objection to the Levites as judges, from their daily assisting in killing the sacrifices, answered, p. 383.—(1) Difference between an ordinary and supreme judge; the latter, not the judge of the fact, *ib.*—(2) The Levites appointed as judges, excused from attendance at the altar, p. 384.

§ 2. ART. CLXV.

Distinction of Animals in a legislative point of view. P. 385—388.

I. Domestic. II. Wild; of which last, (1.) edible, or clean; (2) not edible, p. 385.—(3) Ravenous; (4) Fishes, p. 387.—Moses takes no notice of the two last, *ib.*—The Israelites bred no poultry; Explanation of Jer. xvii. 11.; דגב should be read דגב, p. 386.

§ 3. ART. CLXVI.

Of Domestic Animals; particularly the Ox, Ass, and Horse. P. 388—399.

Importance of the ox, p. 388.—in agriculture, preferable to the horse, p. 389.—regarded with veneration in ancient times, p. 390.—particularly in Egypt, and why, p. 391—Ox not to be muzzled when threshing, &c.; and why not to be yoked with an ass, p. 392.—Modern preference given to the horse, p. 393.—Abstract of the subjoined Dissertation on the horse, p. 394—396.—Horse-racing important to the breed, p. 396.—Why Moses, though acquainted with the horse, did not patronise him, p. 397.—The camel and ass, in Arabia, p. 398.

§ 4. ART. CLXVII.

Of the Sabbath, as intended for Beasts. P. 399, 400.

The Mosaic statute here; necessity of intermission from labour, p. 399.—Horses soon worn out by daily work, p. 400.

§ 5. ART. CLXVIII.

Castration of Animals forbidden. P. 400—407.

The Mosaic statute, p. 400.—*Le Clerc's* difficulty obviated, p. 401.—applicable only to stall-fed cattle, p. 402.—The Oriental curb, חרד, p. 404.—Even horses not castrated in Arabia, p. 405.—Castration, as it affects sheep; Extract from the Author's treatise *on the Management of Sheep in the East*, p. 406.

§ 6. ART. CLXIX.

Concerning the Prohibition of killing Beasts, during the abode of the Israelites in the Wilderness, unless they at the same time offered them to the Lord; and the use which Moses here made of the Laws to which they had been accustomed in Egypt. P. 407—416.

Translation of the statute, Lev. xvii. 1—7. p. 407.—That Moses allowed beasts *not* for offerings to be killed any where, a mistake, p. 408.—Different sense of שחט and זבח, p. 408.—Dr. *Lilienthal's* Codices and exposition examined, p. 409.—The appetite for flesh, little in warm countries, p. 410.—But few cattle in the desert, *ib.*—The law here necessary to prevent idolatrous sacrifices, p. 411.—Moses here availed himself of the Egyptian practice, p. 412.—but without any craft, p. 413.—The prohibition confined to the wilderness, p. 414.—Eating them, *even as the hart and roe*, explained, p. 415.

§ 7. ART. CLXX.

Laws respecting Game P. 416—418.

Game free to all, but spared in the seventh year, p. 416.—Game laws must vary with circumstances, p. 418.

§ 8. ART. CLXXI.

Of the Law respecting Birds' Nests found without one's Property. P. 418—429.

Strange explanations of it given by *Heuman*, *Nonne*, &c. p. 419.—How far it really extended, p. 420.—The danger of extirpating any species of birds, p. 420.—Examples from *Linneus*, &c.; the Virginian crow; the common crow, p. 421.—The Egyptian vulture, רחם; its use in Cairo, p. 422.—The *Ibis*, *Seleucis*, and *Myagrus*, in Palestine, p. 423.—Destruction of sparrows in Prussia, p. 424—

Their usefulness, p. 425.—Three reasons for Moses' attention to birds, p. 426.—If Moses meant to inculcate compassion by an example, p. 426, 427.—Rules among sportsmen, ib.—The blessing of the fifth commandment, promised by Moses to the keepers of this law, p. 428.—Reference to a Dissertation of the Author on this law, p. 429.

APPENDIX TO ART. CLXVI.

A Dissertation on the most Ancient History of Horses and Horsebreeding, in Palestine and the Neighbouring Countries, especially Egypt and Arabia. P. 431—514.

PREFACE, stating that this Dissertation is founded on Biblical documents, that is, on the earliest and most authentic records of mankind, p. 432.

INTRODUCTION. Arabian horses now the noblest; the Arabs do not cross with foreign breeds, as we do, p. 433.—That horses degenerate if the breed not crossed, a mistake, p. 434.—*Buffon* wrong, in supposing Arabia the original country of the horse, p. 435.—Horses not found in Arabia till a late period, p. 435.

First Period; to the time of Moses.

The patriarchs had no horses; Abraham, whence he came; who were the Chaldees, p. 436.—Abraham in Egypt; why horses not among the king's presents to him, p. 437.—Isaac's, Jacob's, Job's riches; Scene of Job's supposed history, p. 438.—Had the Sodomites cavalry?—The ἡ ἵππος of the LXX. not a proper version of רכש, p. 440.—*Ana's* discovery, not mules, but warm baths, probably those of *Callirhoe*, p. 441—443.—No horses in Arabia in Moses' time; the Midianitish plunder, p. 443.—Moses mentions horses in Egypt very early; in Joseph's time: carriages also, p. 444.—Jacob's burial, p. 445.—Progress of horsemanship, p. 445—447.—Egypt a country to which horses and carriages were suitable, p. 448.—Horses plentiful

there in Moses' time ; Pharaoh's cavalry ; Moses' prohibition relative to Goshen p. 449.—Job's description of the war-horse, indicates a foreign animal, p. 450.—A version of it. p. 451.—Its beauty and accuracy, p. 452 —Moses the author of Job, p. 453.—The horse probably not indigenious in Egypt p. 454.—but very important to its defence, p. 455.—*Homer's* description of *Thebes* illustrated, p. 457.—His meaning misconceived ; Reference to a work of *Fabrice*. p. 458.—The Egyptian cavalry how stationed p. 459, 460.—*Diodorus Siculus'* account of *Thebes* p. 461, 462

Second Period ; from Moses to David's death.

Moses exhorted the Israelites not to be afraid of the Canaanitish cavalry, p. 463.—and to hough their horses. p. 464.—Joshua found no cavalry in South Palestine, but numerous in North, p. 465.—These not from Egypt, but Armenia, p. 466 —After Joshua's death, iron chariots in South Palestine, p. 466.—The reading in 1 Sam. xiii 5. of 30 000 chariots, examined, p. 467—469.—Cavalry in North Palestine, in the time of the Judges ; Deborah's song quoted, p. 469.—Horses not in use, when Saul was made king, p. 470.—David had no cavalry, p. 471.—The king of *Aram-Zoba* who? p. 472, 473.—David destroyed all his 7000 horses, except 100 p. 473 —In the Psalms the horse only mentioned as used by the enemies of God's people, p. 475.—A passage from the Author's imitation of Psal. viii. p. 476.—The Israelites however, now beginning to use horses and mules. p. 476, 477.—Mules probably from Armenia p. 478. —The Hebrew name of a mule, and the German, of a horse, the same ; the probable reason, p. 479.—Remark on Psal. xxxii 9 ; the bit רֶטֶן p. 480.—Common version of Psal. lxvi. 12. corrected p. 481.—בִּצְוֶדָה. *a snare* ; Catching of wild horses in Hungary, p. 482 —Another remark on Psal. xxxii. ; בָּלֹם, *a nose-ring*. p. 483 — Still no horses in Arabia, p. 484.

Third Period ; from Solomon to Nebuchadnezzar.

Solomon established a cavalry-force ; and from this time the Israelites ceased to be redoubtable in war p. 485. —and were never again formidable till the time of the Maccabees, when they fought on *foot*, p. 486 —Solomon stationed his cavalry in particular cities, on the

Egyptian plan; The 40,000 stalls, an error, *ib.*—Solomon's horses fed, not with *oats*, but with barley and straw, p. 487.—Solomon's trade in Egyptian horses, a monopoly, p. 488.—The ancient transports of cavalry dubious, p. 489.—How the Egyptians came to export horses, p. 489 —How the Canaanites preferred Egyptian horses to Armenian, p. 490.—Arabia yet not renowned for horses, p. 491.—What country *Coa* or *Mekkoa* is, whence Solomon also purchased horses, p. 491—493.—Egypt still famous for horses; Shishak's 60,000 cavalry, p. 493.—Passages from Solomon's writings relative to horses, p. 494.—Notices of horses in Isaiah's time, p. 495.—Threshing with them, p. 496.—Colour of horses, p. 497.—Habakkuk first gives horses to the chariot of God, p. 498.—Horses yet unshod, p. 499.—The Tyrians, in Ezekiel's time, had their horses from Armenia; Two inferences hence, p. 499.

Illustration of a Prophecy of Isaiah, (chap. xxi. 7.)

Relative to the conquest of Babylon by Cyrus, p. 500.—Xenophon's account of camel-cavalry, p. 501.—Cyrus probably had ass-cavalry, p. 502.

Particulars relative to the Horse in Arabia.

The camel. and not the horse, the animal peculiarly suited to Arabia, p. 503 —Used not only in trade, but in war, p. 504.—Arabia without horses in *Strabo's* time, p. 505.—But Josephus, not long after, mentions them as there. p. 506.—When and whence they had them, uncertain, *ib.*—Their pretensions, as to 2000 years, and Solomon's stud, very dubious, *ib.*—Their perfection in horsebreeding, to what ascribable, p. 507 —Their names of race-horses, p. 508.

Remarks on the Hebrew Names of the Horse.

Strange, that he has no Egyptian name, p. 509.—The Hebrew כּוּס not of Arabic origin p. 510 —If Persic from *Susa*, p. 511.—The other name, פָּרס, perhaps from *Fars*, the Persian word for a horse, and also for *Persia*, strictly so called p. 512.—Probably the Canaanites, whose language was adopted by Abraham's posterity, became acquainted with horses thence, p. 513 —Xenophon's *Cyropædia* opposes this idea, but, perhaps, not on sufficient grounds, p. 513.

ERRATA.

The Reader is particularly requested to correct with a pen the following mistakes,
as they materially affect the sense.

- Page 5. line 11. *for of, read among.*
— 8. — 25. *read enumerations.*
— — — 26. *for attempted, read carried on.*
— — — 27. *dele so.*
— 12. — 8. *read the price of a wife.*
— 41. — 4. *for law, read laws.*
— 42. — 19. *for and, read but.*
— 87. — 6. *for her, read his.*
— 128. — 12. *for has, read have.*
— 156. — 14. *for latter, read Latin.*
— 176. — 9. *for fifteenth, read fiftieth.*
— 180. — 9. *after also, add Deut. xv. 17.*
— 231. — 2. *for DUMB, read BLIND.*
— 240. — 27. *for quiz, by, read squibs, by throwing.*
— 330. — 31. *for weasels, read weevils.*
— 482. — 3. *for מצורח, read מצודה.*

COMMENTARIES
ON THE
LAWS OF MOSES.

BOOK III. CONTINUED.

CHAPTER V.

OF POLYGAMY.

ART. XCIV.

The Mosaic Laws permitted more than one Wife.

§ 1. How much soever some may have denied it, nothing is more certain than that by the civil laws of Moses, a man was allowed to have more wives than one. No doubt, all the proofs of this fact, which it is usual to adduce, are not valid; and to the maintainers of the opposite opinion, it may be an easy matter to controvert such as are weak or inaccurate; but the following arguments appear to me to place the matter beyond all doubt.

1. It is certain that *before* the time of Moses, polygamy was in use among the ancestors of the Israelites, and that even Abraham and Jacob lived in it. It is

also certain, that it continued in use *after* the time of Moses. I will not interrupt the text with a multitude of examples* ; but there are two of such weight as

* These I have collected in my Dissertation, *On the Marriage Laws of Moses prohibitory of the Union of Near Relations*, p. 231, 232. ; and as my readers may be interested in seeing them at one view, I shall here set them down as they occur in the order of the Biblical books. The examples of those monarchs, after David's time, who carried polygamy to an enormous extent, and kept a numerous seraglio, such as Solomon, Rehoboam, and Zedekiah, I omit ; because I am sensible that their conduct on this point was contrary to the Mosaic statute of Deut. xvii. 17.

(1.) According to Judg. viii. 30. Gideon had *many* wives, and 70 sons by them.

(2.) Judg. x. 4. Jair had 30 adult sons ; and as it is likely he had not sons only, but daughters also in proportion, we cannot doubt that he lived in polygamy, particularly when we reflect that Hebrew mothers generally nursed their children until in their third year.

(3.) Judg. xii. 9. Ibzan had 30 full-grown sons, and as many full-grown daughters, which, without polygamy, was impossible ; and in like manner,

(4.) Judg. xii. 14. Abdon had 40 adult sons, and 30 adult daughters.

(5.) 1 Sam. i. Elkanah had two wives at once.

(6.) 2 Sam. iii. 7. xii. 8.—We hence see that Saul lived in polygamy.

[1 Chron. ii. 9, 21. I omit this text, because, as M Premontval justly remarks, it may be understood of Hezron having married a second wife after the death of his first. For the same reason, I likewise omit 1 Chron. ii. 25, 26. iv. 5.] But,

(7.) 1 Chron. ii. 18. Caleb, the son of Hezron, had two wives.—The words of the original literally rendered are, *Caleb begat children by Azubah his wife, and by Jerioth, and these are her (not their) sons.* Here, then, we have a similar case to those recorded in Gen. xvi. 2. and xxx. 3, 4, 9. where the maid bare children on the wife's bosom, which were deemed to belong to the latter. Hence the sons of the maid Jerioth, are ascribed to her mistress, and called *her* sons, in the

to merit particular notice.—One of them we find in 1 Chron. vii. 4. where not only the five fathers, named in the preceding verse, but also their descendants, forming a tribe of 36,000 men, had lived in polygamy, which also shews, by the way, that it must have been more common in some families than in others.—The other occurs in 2 Chron. xxv. 3. where we see the high-priest himself, who was of course the authentic expounder of the Mosaic statutes, taking for Joash, who clave to him as a son, *two wives*, which shews that he

A 2

singular. Besides her, Caleb had had another concubine, ver. 46. named Ephah. I do not here include the wife whom he married after Azubah's death, and who is called Ephrath, ver 19. I only remark, that she is not to be considered as one and the same person with Ephah; because in Hebrew the names are written in quite different characters.

As, however, I am not here concerned for the defence of an interpretation, but for the cause of truth, I must at the same time remark, that part of what I have now said concerning Caleb will have no weight, if we admit a various reading of ver. 18. which I have found in the Cassel MS. and according to which the verse must be rendered, *Caleb begat with Azubah his wife, Jerioth, and these are her (Jerioth's) sons*. So the Syriac renders.

In ver. 48. of the same chapter, another concubine, *Maacha*, is given to Caleb; but on this I will not lay any stress, because there is a variety of lection in the passage, and because it may be disputed whether it is the same Caleb who is here meant, as before.

(8) 1 Chron. vii. 14 Manasseh had in like manner a concubine, and that too, it would appear, during his wife's lifetime.

(9.) 1 Chron. viii. 8, 9. we read *Shaharaim, after he had separated from his wives, Hushim and Baara, begat, in the land of Moab, with his wife Hodesch, these sons, Jobab, &c.* We see here, that before his departure into the country of Moab, this man had had *two wives*, and had separated from them, probably to please his new favourite, soon after changing his residence.

had not at any rate looked upon *bigamy*, as prohibited by the law of Deut. xvii. 17.

As then, Moses, adhering to established usage, nowhere prohibited a man's taking a second or a third wife, along with the first, it is clear that, as a civil right, it continued allowable; for what has hitherto been customary, and permitted, remains so, in a civil sense, as long as no positive law is enacted against it. Therefore, the objection here made, *that Moses nowhere authorizes polygamy, by an express statute*, amounts to nothing; more especially when it is considered, that, as we shall immediately see under Nos. 3, 4, 5. it is implied in *three* several texts, that he actually did authorize it. But although he had not done so, his silent acquiescence in, and non-prohibition of, the practice previously held lawful, is quite enough to sanction our opinion of his having left it still allowable as a civil right. And,

2. This proof becomes still stronger, when we remark how very common polygamy must have been at the very time when Moses lived and gave his laws. For,

When Moses caused the Israelites to be numbered, he found 603,550 males above 20 years of age. Now, according to political calculations, the proportion of those under 20, to those above it, is in general reckoned as 12 to 20, or, at any rate, as 12 to 15; but admitting, in the present case, that it was but as 10 to 20, to the above number of adult males, we should thus have still to add a half more, or 301,775, for those under 20, besides 22,000 Levites that were reckoned separately; so that the whole number of males must

have amounted to at least 927,325. Now among all this people, we find from Numb. iii. 43. that there were no more than 22,273 *first-born males, of a month old and upward* ; that is, only *one* first-born among 42 ; so that, had the Israelites lived in monogamy, it would follow that every marriage had on an average given birth to 42 children, which, however, is hardly possible to be conceived ; whereas if every Israelite had four or more wives, it was very possible that of every father on an average that number might have sprung, and, of course, of 42 Israelites, there would be but one first-born. At the same time, this being the case, polygamy must certainly have gone great lengths, and been very universally practised among them ; and if it was so, and Moses forbade it by no law, it is obvious that it continued allowable as a civil right. If in this deduction there appear any thing dubious or obscure, I must refer the reader to my Dissertation, *De Censibus Hebræorum*, in paragraphs 4, 5, and 6. of which, I have considered this argument at greater length. It is the second article in my *Commentationes per Annos, 1758-1762. Societ. reg. Scient. Gott. oblatae*.

3. The law of Deut. xxi. 15,—17. already explained, (see Art. LXXXIV.) presupposes the case of a man having *two* wives, one of whom he peculiarly loves, while the other, whom he hates, is the mother of his first-born. Now this is the very case which occurs in Genesis, in the history of Jacob, and his wives Leah and Rachel ; and this law ordains, that in such a case the husband was not to bestow the right of primogeniture upon the son of the favourite wife, but to

acknowledge as his first-born the son that actually was so.

4. The law of Exod. xxi. 9, 10. in like manner already explained, (see Art. LXXXVIII.) expressly permits the father, who had given his son a slave for a wife, to give him, some years after, a second wife, of *freer* birth; and prescribes how the first was then to be treated. The son was bound to pay her matrimonial duty as often as she could have claimed it before his second marriage; and, therefore, if he did so, the marriage still subsisted. If he refused, the marriage immediately ceased, and the woman received her liberty.

When Moses, in Lev. xviii. 18. prohibits a man from marrying the sister of his wife, to vex her while she lives, it manifestly supposes the liberty of taking another wife beside the first, and during her life-time, provided only it was *not* her sister. But because the sense of this passage has been much disputed, and others, in opposition to the plain words of Moses, consider it as a general prohibition of polygamy; as I cannot with propriety expatiate fully on their explanation here, I must refer the reader to my Dissertation already quoted, *On the Mosaic Statutes prohibitory of Marriages betwixt Near Relations*.

What I have now offered concerning the permission of polygamy by Moses, on civil grounds, exhibits not merely my own opinion, but the general opinion of expositors. No one has disputed it with so much acuteness as my late friend, *M. de Premontval*, in the 42d, 43d, 44th, and 45th, Letters of his *Monogamy*. What I have to remark against his opinions, I will not

here repeat. It is to be found in the *Relationes de Libris Novis*, fasc. vi. p. 531,—542. I was then unacquainted with the excellent character of that gentleman, and his (if possible) *too* anxious research, and invincible love of truth; and to this circumstance it is to be ascribed, that some of my expressions are, as he himself in one of his Letters to me phrases it, somewhat keen; but the amiable nature of his disposition is, among other circumstances, manifest from this, that, in the same letter, he not only approves of all the remarks, without exception, which I had urged in contradiction of his doctrine, (a compliment I never had paid me by any other author whose work I had reviewed); but that our controversy also laid the foundation of a zealous friendship betwixt us, which only terminated with his life.

ART. XCV.

Moses was, notwithstanding, no favourer of Polygamy, but merely tolerated it, because of the hardness of the people's hearts.

§ 2. It does not appear that Moses permitted polygamy willingly, or as a matter of indifference in either a moral or a political view, but, as Christ expresses it, merely on account of the hardness of the people's hearts. In other words, he did not approve it, but found it advisable to tolerate it, as a point of civil expediency.

His first book, which is entirely historical, includes many particulars that are by no means calculated to

recommend polygamy. According to him, God, even at the very time when the rapid population of the earth was his great object, gave to the first man but *one* wife, although it is evident that with *four* wives, he could have procreated more children than with one ; and when, in consequence of the flood, the earth was to be reduced anew to its original state in this respect, and God resolved to preserve alive only Noah and his three sons, we still find that each of them had but one wife with him. Now had God approved of polygamy, he would have commanded each of Noah's sons to marry as many wives as possible, and take with him into the ark. From these two historical facts, the natural proportion between the sexes, which, where population is numerous, cannot be discovered without much trouble, becomes at once obvious ; and this very proportion, considering that we actually find much about the same number of men as of women fit for the married state, is the strongest possible argument against polygamy ; the lawfulness or unlawfulness of which, as Montesquieu very justly observes, resolves itself, properly speaking, into a question of arithmetic. In the enumeration of the people, which he more than once attempted, Moses may have remarked this proportion ; but every reader will at once perceive, that so to number a nation consisting of two millions and a half of people, so as thence to form correct lists of births, is hardly possible ; and, therefore, under these circumstances, Moses very probably reasoned with regard to polygamy, in the same manner as our *Süssmilch*.—I omit other particulars of the Mosaic history, concerning which *Premontval's*

Monogamy may be consulted; adding only this one remark, that we can scarcely read the history of Jacob, without conceiving an aversion and dread—I might indeed almost say, a loathing—of polygamy. I now turn to the consideration of the Mosaic statutes on the subject.

Moses did not permit eunuchs to be made among the Israelites. Indeed he went so far as to prohibit even the castration of cattle, Lev. xxii. 24.; and besides this, a eunuch that came from another country to reside among the Israelites, was by a special statute excluded from ever becoming one of the people of God, that is, was incapable of enjoying the privileges and rights of an Israelite, both sacred and civil, Deut. xxiii. 2. This was an ordinance highly unfavourable to polygamy. We commonly find polygamy and eunuchism going together; and in those countries in which the former prevails, such as Turkey, Persia, and China, there are thousands, and even millions of eunuchs. Where so many of the males that are born, can never become husbands and obtain wives, it is nothing less than merciful to place them beyond the temptation of longing for a wife; and, in early infancy, before they know what has befallen them, to assign them that intermediate state, in which, without properly belonging to either sex, they are to live, and earn their bread. Besides, where polygamy is carried to great lengths, there is, in numerous seraglios, where a great many women can be but poorly satisfied with one man, a necessity for vigilant watchers of their chastity. In these countries, female guardians are not considered as worthy of such a sacred trust, be-

cause they soon become too compassionate towards their own sex, from participating in their passions ; and besides, they have intrigues of their own, which gives men too easy access to the seraglio. But the worst circumstance of all is, that in warm climates, women in such a situation are very apt to be guilty of unnatural practices with one another, which are much more odious to the men than actual adultery, because they almost totally extinguish their desire for the male sex. In a word, without eunuchs, a great seraglio cannot be guarded ; and of course, a law prohibiting castration imperceptibly counteracts polygamy. This is also an observation of M. de Premontval ; but the two remarks that follow do not seem to have occurred to him.

1. That sort of polygamy in which a husband devotes himself to a favourite, and deprives another wife of her matrimonial rights as long as he pleases, Moses did by no means tolerate, but in such a case presented even a concubinary slave with her freedom, *Exod. xxi. 8,—11.* His laws, it is true, contain nothing expressly in favour of a wife thus treated, that was not a slave ; but as such an one certainly was not to be on a worse footing than a slave, of course she had an undoubted right to insist on matrimonial duty at the stated times, and on refusal thereof, might surely claim to be set at liberty as well as a slave.

2. The Mosaic statutes in this manner prevented at any rate that species of polygamy which, among people of fortune in the East, constitutes a mere piece of state, and which, in fact, obliges most of the unfortunate inhabitants of a seraglio to lead the life of nuns.

They also compelled those who were not able to perform matrimonial duty to *many* wives at the stated times, rich old men, for instance, to confine themselves to a moderate number. Laws of such a nature are strong restraints on polygamy; for the young are seldom sufficiently opulent to maintain many wives, particularly when, as Moses ordained, the first wife, though a slave, was to lack nothing in point of food and clothing; and the old, again, though they have the means in their power, must, under the conditions prescribed, feel a still stronger hindrance to polygamy, and one not to be removed even by the greatest affluence.

The law of Lev. xv. 18. which declared a husband, after intercourse with his wife, unclean for a whole day, interposed a still farther difficulty in the way of polygamy. For as the husband was obliged to perform matrimonial duty with every wife, at least once a week, and she was entitled to demand it, a man who had but even four wives, or three concubines besides his wife, was thus four days unclean every week, which could not fail to prove a considerable inconvenience.

It would in fact appear, that in the course of time, polygamy had very much decreased among the Israelites, and become rather uncommon. Solomon, in Prov. xxxi. 10,—31. in his description of that wife whom he accounted a blessing to her husband, represents her entirely as a *mater-familias*, that is, the mistress and ruler of the whole household; which a wife in the state of polygamy can never be, being destined solely for her husband's bed, and having no permission to

concern herself at all about domestic economy. It would therefore seem, that although Solomon himself lived in boundless polygamy, his subjects were contented with one wife. Besides, had polygamy continued as common as in the days of Moses, the price of wives would have advanced in proportion to the increased value of other commodities ; but we find that in the time of the prophet Hosea, a wife was still the same as the medium rate in the time of Moses ; for that was about 30 shekels ; and Hosea (iii. 2.) bought *his* for 15 shekels, and 15 ephahs of barley. Every thing else had risen in price, (as I have shewn in my Dissertation, *De pretiis rerum apud Hebræos*, in the 3d Part of the *Commentaria* of the Gottingen Society of Sciences,) except wives ; and consequently, polygamy, which makes *them* scarce and dear, must have been much diminished, or have ceased almost altogether among the Israelites.

That it ceased entirely after the return of the Jews from the Babylonish captivity, is, indeed, certain ; but with that fact we have here nothing to do, as it was neither an article nor an effect of the Mosaic law, but proceeded from other accidental causes.

ART. XCVI.

A Closer Investigation of the Reasons which might determine Moses not to prohibit Polygamy.

§ 3. BUT how came it to pass that Moses, who certainly did not approve of polygamy, and counteracted its increase by various impediments, did not rather at

once prohibit it altogether? This is indeed an important question, and has not hitherto received a satisfactory answer.

Many of Montesquieu's readers will perhaps think, that nothing can be easier than to answer it fully in the following terms: "The lawfulness or unlawfulness of polygamy depends entirely on the proportion of females born to that of males, or is, as Montesquieu very properly terms it, a problem of arithmetic. Now in Asia there are many more females than males, and consequently, polygamy should be there permitted for the very same reason for which it is prohibited in Europe. Where the numbers of both sexes are equal, there both nature and arithmetic prescribe monogamy; but where the procedure of nature is different, and several girls are born for one boy, there she allows, or, I should rather say, there she authorizes polygamy."

Here however, and in what he says of Asia, Montesquieu is undoubtedly mistaken. For without very clear proofs, and without having accurate enumerations, and birth-lists, of all the Asiatic nations, who will believe either him or any other traveller, asserting that, in regard to the proportion of the sexes born, the procedure of nature in Asia, particularly in Turkey, Persia, China, and Japan, is altogether different from what we find it in Europe? It cannot be supposed that the circumstance of these countries lying more to the east than our European regions, can have any effect in this respect: for the difference of climate depends not on the easterly or westerly, but on the southerly or northerly position of a country; in other words,

not on the degree of longitude, but of latitude. Now, Minorca lies under the 39th degree of latitude, and of course, some degrees more to the south than Constantinople, and the countries between the Black and Caspian Seas, whence the Turks and Persians purchase young women for their seraglios, but in the very same latitude with a great part of Turkey, Persia, China, and Japan; and yet this Island, according to *Armstrong's* account, in Letter 15th, of his History of it, had, in the year 1742, exclusive of the English garrison, 15,000 male inhabitants, and but only 12,000 female. Now, how can we believe after this, that under the very same climate, but farther eastward, nature should, on the contrary, produce more persons of the other sex than of ours, merely because there it is noon, when the sun but begins to rise on Minorca? The English colonies in America have, part of them at least, a still more southerly position; but even there, no other proportion of births, in the two sexes, has been remarked, than what is found in England itself.

The whole mistake, into which even the venerable Montesquieu himself has been betrayed, proceeds from this, that in some of the great capitals of Asia, there are a great many more women than men, owing to the residence of monarchs and people of fortune, who keep great seraglios, for which girls are purchased in other places, and brought to the metropolis: It does not, however, thence follow, that in Asia there are more females born than males, but only, that the former being *more* numerous in the rich cities, are in the provinces, whence they are bought, *less* so, in the very same proportion. Mr. *Porter*, the British am-

bassador at Constantinople, makes this remark in the *Philosophical Transactions*, vol. xlix. art. 21st.*; so that it is not matter of speculation, but of experience. But the conclusion drawn from the oriental capitals, to the state of whole countries, in regard to the proportion of the sexes, is much in the same style as would be that of the traveller, who on seeing a German army of 100,000 troops, and remarking that there was scarcely *one* woman with it to *ten* men, should go home and assert that he had discovered, that in Germany, there were ten times as many males born as females.

I am therefore of opinion, that with regard to the polygamy allowed among the Israelites, we can say nothing else than what Christ has said on the subject of divorce. Moses tolerated it *on account of their hardness of heart*, and because it would have been found a difficult matter to deprive them of a custom already so firmly established. The Egyptian monarchs endeavoured to prevent the multiplication of the Israelites, and for this purpose, went so far as to order all their male children, as soon as born, to be thrown into the Nile; and yet Moses found polygamy among them, which of course, could not have been prohibited by the Egyptian government. A people, whose children a tyrant drowned to hinder their increase, while yet he dared not to check their polygamy, must have

* The passages I have extracted in my *Paralipomena contra Polygamiam*, where I have treated at large of this subject. It is the 5th Article of the 2d Part of my *Syntagma Commentationum*; and the passage which I have here somewhat abridged, will be found at p. 124.—127.

clung very closely to that privilege, and not have been likely to surrender it without rebelling.

Whether the climate may have, in any degree, contributed to produce *this hardness of heart*, I will neither confidently affirm nor deny, so long as we are destitute of what I would call a geographical history of polygamy and monogamy, which a person might survey at a short glance; for thus much is certain, that in the most *northerly* regions of Siberia and Tartary, there are nations that live in polygamy; and in the very warmest climates, on the contrary, we find Christians, and even nations satisfied with monogamy. If the former is more prevalent towards the south, we must bear in mind, that in regard to laws, though *much* depends on climate, yet *every* thing does not, but still *more* on accidental circumstances; and that antient usage, or religion, may have a very powerful influence on the nature of the law. But should even the climate actually cause a difference in the point in question, and make it more difficult to put a stop to polygamy, by law, among southern than northern nations, because they are naturally more addicted to it; still the cause thereof would not be referable to any inequality in the proportion of the sexes, but to the earlier puberty of southern nations, and the earlier violence of libidinous propensities therewith connected. The natural consequence of these early and strong feelings of love, are early marriages, were it only of that sort which I have described above, in Art. LXXXVII., from Exod. xxi. 9,—11.; the wife, in such a case, can hardly be more than two years

younger, and the appropriated concubine is perhaps even older than the boy that becomes her husband: and when he has reached his 25th or 30th, and still more, his 37th year, which Aristotle fixed as the fittest time for a man to marry, his wife, or concubine, particularly if she has born many children, has by that time become too old for him, and then he either meditates a divorce, or taking a younger wife in addition to the former. This last is indeed the least of the two evils for the unfortunate first wife; and the legislator who wishes that she, particularly if a slave, that can have no will of her own, may experience the least possible hardship or injustice, will in this view tolerate polygamy. Indeed if he were to prohibit it, it is probable the people would not submit to the privation without some disturbance.—If what I have now said, merely by way of conjecture, be correct, the consideration of climate might have had some influence with Moses in his toleration of polygamy, as a civil right; for Palestine is certainly to be numbered among southern climates, although indeed the Israelites, at the time when Moses may be said to have taken them under his protection, had been accustomed to a country somewhat farther south, and much warmer.

There is yet another circumstance to be taken into the account, which made polygamy in Palestine more tolerable in a political light, than among us, where it would soon depopulate a country, because we have not, as was then the case, any opportunity of purchasing, or of carrying off as captives, the young women of other nations. The laws of war, in those days,

gave the victors a right to make slaves of young women, and these they might employ for the purposes of polygamy, without thereby depriving any Israelite of a wife born to him among his own people. No doubt this was a very severe war law, and detrimental to the general interests of mankind: but it was once established, and although the Israelites had not acted up to it, their neighbours would not therefore have lost any opportunity of doing so, which the fortune of war put into their power. It must also be considered that the Israelites lived in the vicinity of a poor people, whose daughters they could purchase: for nature has been so unkind to Arabia, that most of its inhabitants must always be in a state of indigence, with the exception of any particular family or city that may happen to be enriched by trade, or by singular good-fortune in rearing sheep. Mr. Wood in his *Essay on the original genius of Homer*,* has given a very faithful description of the natural poverty of Arabia, which after all the improvements it can receive from fortune and art, uniformly sinks back into its original state;

* I am here quoting a book, which but few can yet consult, and probably not one of the present readers of my Mosaic law: for Mr. Wood, to whom we owe the *Inscriptions and Ruins of Palmyra*, and who is now under Secretary of State in England, has only printed six copies of it, and given them in presents, *three* in England, *two* in France, and *one* in Germany, which last, by his kindness, I myself possess. He has, however, at my solicitation, permitted it to be translated into German, as soon as he shall have leisure to make some additions which he finds necessary: and as I thus hope to have it soon in my power to communicate this work to my readers, I therefore take the liberty of here previously citing it, as an authority in a point of some importance.

and Mr. Niebuhr has orally given me an account of the poverty of the Arabs, which far exceeded, even what I should have expected.

ART. XCVII.

Limitation of Polygamy.—Moses allowed more than one Wife, but prohibited many: that is probably more than four.

§ 4. ALTHOUGH the Mosaic laws do not prohibit more than one wife, still they did not thereby authorize polygamy in the whole extent of the word, and that a man might have as many wives as he pleased. This is not perhaps altogether the consequence of those statutes, which enjoined the husband to perform the conjugal rites with every wife within stated periods; for Moses, (as we have seen in Art. LIV.) most expressly prohibited even the future king *from having many wives*: (Deut. xvii. 17.) and of course, that could not but be forbidden to the people at large.

But if more than *one* wife was allowed, and *many* forbidden, the question comes to be, what is meant by many? And to that question I can only give what may be called a probable answer, and to this effect: that by *many* seems to be meant *more than four*, that number being permitted, but not more. This is the doctrine of the Talmud and the Rabbins, of which the reader will find a more detailed account in *Selden de Uxore Hebraica*. To their testimony and opinion I would indeed pay but little respect, in most points

relating to the original Mosaic jurisprudence* : but here they seem for once to be in the right. For Mahomet, who generally follows the antient Arabian usages, in the iv. chapter of the Koran, also fixes *four* as the number of wives to be allowed, and commands that it be not exceeded : and before the time of Moses, there would seem to have likewise been an antient usage, in the patriarchal families, which limited polygamy to this same number, and which may also have continued among the Jews and Arabs. We have reason to presume that this was the case from a passage in Gen. chap. xxxi. 50. Jacob had four wives, Leah, Rachel, and their two maids. Laban, his father-in-law, was so little an enemy to polygamy, that instead of *one* of his daughters, whom Jacob wished to have, he contrived by a piece of artifice, and contrary to Jacob's inclination, to force them *both* upon him. But notwithstanding this, we find him in this passage requiring Jacob to take an oath that he would not take any more wives. He seems to have thought with the Poet,

Est modus in rebus, sunt certi denique fines :

and this *modus* was, in his opinion, what Jacob already had, *four wives*. Now as Moses does not explain what he calls *many*, he must, from some such established custom, have presupposed it perfectly known.

* The reasons of this will be found in §. 9. 10. of my Dissertation on the Mosaic Statutes prohibitory of the Marriage of near relations.

CHAPTER VI.

CERTAIN PECULIARITIES RELATIVE TO MARRIAGE AMONG THE ISRAELITES.



ART. XCVIII.

*Of Levirate-Marriage ; that is, the Marriage of a
childless Brother's Widow.*

§ 1. I now proceed to the explanation of a singular law, which I must however preface, with intreating, in behalf of the lawgiver, that it may not be considered as an invention of his own ; as it was in fact several centuries older than his laws, and as he very much limited and mitigated its operation. The law I mean, is, what has been termed the Levirate law : in obedience to which, when a man died without issue, his brother was obliged to marry the widow he left, and *that* with this express view, that the first son produced from the marriage should be ascribed, not to the natural father, but to his deceased brother, and become his heir. This has been denominated Levirate-marriage, from the word *Levir*, which though it appears not in the antient classic authors, but only in the Vulgate and the Pandects, is nevertheless really

an old latin word, and is explained by Festus to signify *a husband's brother*. The Hebrews had, in like manner, an antient law term, which we meet not with elsewhere, יבם (*Jabam*,) of the very same import; whence come יבמת (*Jebemet*,) *a brother's wife*, and יבב (*Jebbem*,) *to marry such a person*. The Chaldee, Syriac, and Samaritan versions of the Bible do indeed retain this word, but it is not otherwise at all current in these languages, nor can we find in them the least trace of an etymology for it, and in the Arabic tongue it is altogether unknown. This is often the case with respect to the Hebrew law terms. The Hebrew language alone has them, and without all etymology, while, in the kindred languages, they are either not to be found at all, or in quite a different sense. How that happens I am ignorant, with this exception, that I frequently remark, in like manner among ourselves, ancient law terms, whose etymology is obscure, because old words have been retained in law, while the language has in other respects undergone alterations. The law in question occurs in Deut. xxi. 5,—10. I have treated of it at great length in an Essay, read before the Gottingen Society of Sciences, in February 1763, and which forms No. x. in my *Commentationes*. What follows is only an abstract of that Essay.

The law which obliged a man to marry the widow of his childless brother, was much more antient than the time of Moses: having been in use in Palestine among the Canaanites, and the ancestors of the Israelites, at least more than 250 years previous to the date of his law, and indeed with such rigour, as left a person no possible means of evading it, however irksome

and odious compliance with it might appear to him. That the Mosaic statute considerably mitigated its severity, will appear from comparing the story of Judah and his daughter-in-law, (Gen. xxxviii.) Tamar, with the provisions of that statute. Er, the oldest son of Judah, who had married a Canaanitish woman of that name, having died without children, Onan, the second son, was absolutely, and much against his inclination, compelled to marry her, and that with this express view, that the first son she produced to him, and perhaps even all his children, should be considered as appertaining to his deceased brother. Onan's aversion to this match was so very great, *ut coitu ante seminis effusionem semper desisteret*, in order not to procreate children, of whom he knew that they were not to bear his name : and yet he could not get rid of this undesirable connection. Of course he had no children, and as he soon died, like his elder brother, it now came to Shelah's turn, the third son, to marry Tamar. His father Judah, however, was by no means anxious for this new match, probably because he believed that Tamar's incontinence had been the cause of the death of his two elder sons ; yet, so strict was the law at that time, he could find no other means of evading it, than by delaying the marriage, under this pretext, that Shelah was yet too young, and had not arrived at manhood. This delay, however, proved too tedious to the widow, who began at last to think that Shelah must now be a man, and that his friends were only imposing upon her ; and therefore she conceived herself justified in endeavouring to procure by stealth, the

Levirate-embrace, even from her father-in-law. Accordingly she put on the dress of a common prostitute, and with her face veiled, sat down in a place where women of that description generally stationed themselves, and where Judah had to pass. The device succeeded, and Judah embraced her without knowing who she was: but she had in her hands proofs of the fact, because he had left with her, as a pledge, his staff, his seal, and the string which suspended it. Her conduct in this affair was beyond measure infamous: but such was then the force of the Levirate law, that when Judah, on being apprized of her pregnancy, ordered her to be burnt as an adulteress; as soon as she sent him the staff, signet, and string, that he might know by whom she was pregnant, he exclaimed, *she has right on her side, and I have acted unjustly in that I gave her not to Shelah my Son.*

Whence so strange a law could have arisen, remained altogether unknown, until very lately that *Euler* learned it from the Russian generals; and *Süssmilch* from *Euler's* communication declared the mystery to the world, in his work, entitled, (*Göttliche Ordnung in Veränderungen des menschlichen Geschlechts*, that is,) *The Divine Plan, in the Changes that occur in the Numbers and Circumstances of the Human Race.* It has been commonly believed that its only foundation was the peculiar notion of the Israelites on the subject of having descendants, who, by bearing their name, might serve in some measure to immortalize them; and this fancy in regard to honour may, no doubt, have been a reason with Moses for retaining a law, of which he does not appear to have very highly

approved; but it can hardly have been the sole or first cause whence it originated. For as we see from the story of Tamar, this very Levirate-law was long before the time of Moses in force among the Canaanites; a people who did by no means entertain any such genealogical ideas with regard to honour and posthumous fame, and who, at a former period, would seem to have scarcely had marriage among them, but to have lived *in concubitu promiscuo* *. And what is still more remarkable, the Mongols, who inhabit quite a different region of Asia, and give themselves very little concern about their genealogies and descendants, have a law which, in like manner, enjoins the marriage of a brother's widow†. Some have on this ground been disposed to consider the Mongols as descendants of the ten tribes that were carried captive into Assyria; but the situation of the two countries, their languages, their customs in other respects, and even the striking peculiarity of the features of the people, all concur very strongly to refute that opinion‡. If they are to furnish a proof of levirate-marriage, why were they not rather made Canaanites than Israelites? Had the patrons of that opinion read Moses with so

* I here refer to § 6. of my Dissertation, *De Troglodytis Seiritis*, only remarking that these Troglodytes, who inhabited Mount Seir, were Canaanites.

† See Du Halde's *Description de la Chine et de la Tartarie Chinoise*, tom. iv. p. 48.

‡ I here refer to my Dissertation, *De X. Tribuum exilio*, where I have likewise shewn that the ten tribes that were carried into captivity, were by no means so great a people as they are commonly represented, and that their posterity very probably returned back into Palestine.

little attention, as to have forgotten the narrative given in the xxxviii. chapter of Genesis?

The truth is, that we have no ground for considering the Mongols as either the one or the other; and *Süssmilch*, without having the Mosaic statute at all in his view, has traced the source of Levirate-marriage so distinctly, that we have only to read, in order to be convinced.

It is the practice of polygamy, either at home, or among opulent neighbouring nations, that has originally given occasion to the Levirate-law, and that by the following gradual process.

Among the Mongols, whose daughters are frequently bought by their richer neighbours that live in polygamy, young women are so scarce that every man cannot procure himself a wife; and hence has arisen one of the most shameful customs that can possibly be conceived. All the brothers of a family are satisfied with one and the same wife, whom they purchase in common, and on this footing, that the eldest brother is to regard, and breed up as his own her first son; the second, her second; and so on, to whomsoever of the brothers he may naturally and properly belong; which, indeed, in the case of so many being concerned, it would not be easy to ascertain. This is the substance of what *Süssmilch* learned from *Euler*, and *Euler* from the Russian generals, who were acquainted with those countries; and it has furnished us with a clue by which we can trace the progress and effects of polygamy in its different degrees of refinement.

For we have only to suppose it in a small degree refined, and conceive the case of a brother, not in ab-

solute poverty, and possessed of some feelings of jealousy, honour, delicacy, love, or whatever you chuse to call it ; and the result will naturally be the following : As young women are scarce and dear, one only of many brothers will marry, who has saved as much as enables him to purchase a wife. When he dies, his widow, with the inheritance, will, whether she have sons or not, devolve to his next brother. This is actually the levirate-law in *Mungalia*, as Du Halde describes it, and as it is exercised by those who do not live in polyandry, properly so called. According to the ancient usage of the poor Arabian tribes in their neighbourhood, the kings of Israel, precisely in the same manner, fell heirs to the whole seraglio of their predecessors, as I have already had occasion to remark under Art. LIV. No. 7.

A little farther degree of refinement will except from going with the inheritance the widow, who, by having had sons, has in a manner repaid the price which she cost ; while she who has yet had no sons, still continues a part of the inheritance, and belongs to the next brother. In this case, she will not only not be at liberty to marry any other person, but will, besides, if she commit a *faux-pas*, be liable to be considered and punished as an adulteress. Thus Judah, when he heard of Tamar's pregnancy, wished to inflict upon her the usual punishment of adultery, and to have her burnt.

Thus far the law only gives the surviving brother a right to the widow as a part of the inheritance, but there thence arises on the other hand a reciprocal right on the widow's part to him. If she may not

marry any other man, and if a breach of chastity expose her to the punishment of adultery, she certainly acquires a right to insist on his marrying and cohabiting with her. And this will assume an appearance of still farther refinement, if it be understood that she is actuated herein not by the impulse of incontinence, but by a principle of affection and duty towards her deceased husband, to whom, as he left no sons, she would fain erect a memorial. In this way, the natural impulse is clothed in the garb of decency, in conformity to the prevailing ideas of the people. At last, however, a compulsory law is introduced, obliging the surviving brother to marry his sister-in-law ; and whoever refuses to do so, is not only regarded as pouring unjust contempt on *her*, but as destitute of all love to the deceased brother, whose name he will not help to preserve.

And thus we have the complete detail of the progress of the levirate-law, which, after all its improvements, was unquestionably attended with great inconveniences : For a man cannot but think it the most unpleasant of all necessities, if he *must* marry a woman whom he has not chosen himself. *Must*, in matters of love and marriage, is a fearful word, and almost quite enough to put love to flight, even where beauty excites it. We see, likewise, that the brother, in some instances, had no inclination for any such marriage, (Gen. xxxviii. Ruth iv.) and stumbled at this, that the first son produced from it could not belong to him. Whether a second son might follow, and continue in life, was very uncertain ; and among a people who so highly prized genealogical immortality

of name, it was a great hardship for a man to be obliged to procure it for a person already dead, and to run the risk, meanwhile, of losing it himself. Nor was this law very much in favour of the morals of the other sex ; for not to speak of Tamar, who, in reference to it, conceived herself justified in having recourse to a most infamous action, I will here only observe, that what Ruth did, (chap. iii. 6,—9.) in order to obtain for a husband, the person whom she accounted as the nearest kinsman of her deceased husband, is, to say the least, by no means conformable to that modesty and delicacy which we look for in the other sex ; and it would appear, that if Boaz had chosen to avail himself to the fullest extent of the opportunity that she gave him on that occasion, she would not have opposed him.

A wise and good legislator could scarcely have been inclined to patronize any such law. But then it is not advisable directly to attack an inveterate point of honour ; because in such a case, for the most part, nothing is gained ; and in the present instance, as the point of honour placed immortality of name entirely in a man's leaving descendants behind him, it was so favourable to the increase of population, that it merited some degree of forbearance and tenderness. Moses, therefore, left the Israelites still in possession of their established right, but at the same time he studied as much as possible to guard against its rigour and evil effects, by limiting and moderating its operation in various respects.

In the *first* place, he expressly prohibited the marriage of a brother's widow, if there were children of

his own alive, (Lev. xviii. 16. xx. 21. and Dissertation § 71.) Before this time, brothers were probably in the practice of considering a brother's widow as part of the inheritance, and of appropriating her to themselves, if unable to buy a wife, as the Mongols do ; so that this was a very necessary prohibition. For a *successor præsumptivus in thoro*, whom a wife can regard as her future husband, is rather a dangerous neighbour for her present one's honour ; and if she happen to conceive any predilection for the younger brother, her husband, particularly in a southern climate, will hardly be secure from the risk of poison.

In the *second* place, he allowed, and indeed enjoined, the brother to marry the widow of his childless brother ; but if he was not disposed to do so, he did not absolutely compel him, but left him an easy means of riddance ; for he had only to declare in court, that he had no inclination to marry her, and then he was at liberty. This, it is true, subjected him to a punishment which at first appears sufficiently severe : the slighted widow had a right to revile * him in court as

* The Hebrew expression in Deut. xxv. 9. וירקה בפניי, has been by some so understood, as if the widow had a right to spit in his face. And no doubt it may signify as much ; but then that act in a public court is so indecent, that if any other interpretation is admissible, this one ought not to be adopted. Now there are two others : 1. *She shall spit before his face.* The Arabs, at this day, when they wish to affront any one, spit, and cry *Fi* ; even people of rank do so, just as the common people do with us. This account we find even in lexicons ; but I know it besides, from the information furnished both by Solomon Negri, a native Arab, and by Travellers. 2. ירק may also mean *to revile* ; properly, *Bilem evomere*, which signification is familiar in Arabia ; only that, according to the usual rule, the Hebrew *Jod* must be changed into *Vau*, and the word written *Varak*.

much as she pleased ; and from his pulling off his shoe, and delivering it to the widow, he received the appellation of *Baresole*, which any body might apply to him without being liable to a prosecution. A little consideration, however, will shew that this punishment was not so severe in reality as in appearance. For if *Baresole* is once understood, according to the usage of the language, to mean nothing more than *a man who has given a woman the refusal*, it is no longer felt as a term of great reproach, and any one will rather endure it, than have his *own* refusal talked of. To be once in his life-time solemnly abused in a public court by a woman, is at any rate much easier to be borne, than the same treatment from a man, or extra-judicially : and if, besides, the cause is known, and that the court allows her this liberty, in order to give free vent to her passion, because the man will not marry her according to her wish ; the more violent the emotions of her rage are, the more flattering to him must they prove ; and he will go out of court with more pride than if she had excused him from marrying her, with much coolness, or without any emotion at all.—I have often heard vain fops mention in company, how many women in *other* places would gladly have married them, and were greatly enraged that they would not take them. On persons of this description, such a judicial punishment would indeed have been very justly bestowed. But it is at worst more flattering than even the very politest language with which a lady begs leave to decline an offer of marriage, or but distantly yields to it. A legislator, in ordaining a punishment of this nature, could hardly

have had it in view to insist very particularly on the observance of a statute, that but ratified an old custom by way of a compliment. If it had been a point in which he was interested, he would have ordained a very different punishment.

3. The person whose duty it was to marry a childless widow, was the *brother* of her deceased husband, in the strict sense of the word, as the story in Gen. xxxviii. clearly shews. I would not have thought it necessary to make this remark, had not the contrary opinion been maintained in a Dissertation delivered here at Gottingen, in which it is asserted, that the word *brother* in Deut. xxv. 5,—10. is to be taken in a general sense, and means *a relation*, excluding the real brother. The law, however, only extended to a brother living in the same city or country, not to one residing at a greater distance. Nor did it affect a brother having already a wife of his own. At least, if it had its origin in this, that by reason of the dearness of young women, often only one brother could marry, and the others also wished to do the same, it could only affect such as were unmarried; and in the two instances that occur in Gen. xxxviii. and Ruth iv. we find the brother-in-law, whose duty it was to marry, apprehensive of its proving hurtful to himself and his inheritance, which could hardly have been the case, if he had previously had another wife, or (but that was at least expensive) could have taken one of his own choice.

When there was no brother alive, or when he declined the duty, the Levirate law, as we see from the book of Ruth, extended to the next nearest relation

of the deceased husband, as for instance, to his paternal uncle, or nephew ; so that at last, even pretty remote kinsmen, in default of nearer ones, might be obliged to undertake it. Boaz does not appear to have been very nearly related to Ruth, as he did not so much as know who she was, when he fell in love with her, while she gleaned in his fields. Nor did she know that he was any relation to her, until apprized of it by her mother-in-law.

Among the Jews of these days, Levirate-marriages have entirely ceased ; so much so, that in the marriage contracts of the very poorest people among them, it is generally stipulated, that the bridegroom's brothers abandon all those rights to the bride, to which they could lay claim by Deut. xxv.

ART. XCIX.

Of Marriage with a Person of Inferior Rank ; and of the Restraints laid upon Priests in regard to the Circumstances of the Wives whom they might Marry.

§ 2. IN the East no regard is paid to equality of rank in marriages, and the meanest slave may be, not only the wife, but even the mother of a king. Hence we find no law prohibiting an Israelite from marrying out of his rank, and still less one that made marriages with persons of very inferior station, nugatory.

The foundation of the great dissimilarity of the Hebrew law from ours in this point, it is easy to perceive. The great stress which we put on equality of rank in marriage, arises partly from our having an hereditary

noblesse, who wish to keep distinct from those that are not ennobled, and whom our greater commoners imitate, in order to have somewhat the appearance of nobility ; and partly too from the great perplexity in which a man finds himself who has married a woman of inferior rank, whom by reason of her want of education, and the various and petulant sneers to which both she and himself are exposed, he dare not venture to bring into company. Let her be ever so beautiful, she must still be deficient in that ease of manners, and that confidence, which are requisite in our society. Thus, even the citizen of distinction, who marries the daughter of a Tailor or Shoemaker, may from this circumstance find the connection very uncomfortable all his life, and be exposed to numberless vexations. But in the East there can be no such misfortunes ; for there they have no such hereditary nobility as ours ; (see Art. XLII.) and husbands have so little desire to bring their wives abroad into society, that it is rather the object even of people of the highest rank, to confine them as closely as they possibly can.

To the priests alone, whom I have (in Art. XLII.) represented as a sort of Mandarin aristocracy, has Moses laid down any special rules with respect to their marriages ; and even these rules relate, not to what we call rank, but to other things. The statutes that contain them are to be found in Levit. xxi. 7. 13, 14.

By these statutes a priest was not permitted to marry either (1.) a harlot, or (2.) a woman divorced ; and the high priest was, besides, interdicted from marrying (3.) a widow, and (4.) a foreigner. *He*

shall take a virgin of his own people to wife. Nor might he, of course, dispense with the *signa virginitatis* ; and our countryman *Von Logau* is therefore right, when describing, in one of his Poems, a rich and beautiful damsel, he says, with a *but*,

The Jewish High Priest, for his life,

Durst not have made this nymph *his* wife.

Amidst all these restrictions however, there was nothing to hinder a priest, and even the high priest, from marrying an Israelitess of the lowest rank, even one that had from poverty been sold as a slave : so very little was equality of rank regarded by the very legislator, who gave at the same time so strong an injunction, with respect to the virginity of the high priest's wife, as would not now-a-days be required, even by the nobleman that piqued himself most on the purity of his descent.

It would appear that these laws relating to the marriages of priests had, in process of time, by established custom, become a degree stricter. For according to Moses, a common priest *might* marry a widow, but in Ezek. xliv. 22., this is prohibited, unless she were a priest's widow ; and in the same passage, every priest is enjoined to marry *a virgin of Israelitish descent*. I am well aware that this chapter of Ezekiel contains only the relation of a vision : but still it would appear that the precepts contained in it, had been founded on usages previously introduced.

ART. C.

An Israelite might Marry out of his Tribe ; he might even Marry a Woman born a Heathen, if not a Canaanite.

§ 3. THE assertion that no Israelite durst marry out of his tribe, and which we find repeated in a hundred books, is a silly fiction, directly confuted by the Mosaic writings. Even the high priest himself was not obliged to confine himself to his own tribe ; nothing more being enjoined him, than to look out for an Israelitish bride. It was only in the single case of a daughter being the heiress of her father's land, that she was prohibited from marrying out of her tribe, in order that the inheritance might not pass to another tribe, Num. xxxvi. From that law, it clearly follows, that any Israelitess that had brothers, and of course was not an heiress, might marry whomsoever she pleased, and to me it is incomprehensible how this chapter should ever have been quoted as a proof of the assertion, that the Israelites durst not marry out of their tribes. A strange oversight has been committed, in support of this erroneous opinion, which was devised for the purpose of proving (what scarcely required a proof,) that Jesus was of the tribe of Judah ; for, say its advocates, " Had not Mary his true mother been of the tribe of Judah, Joseph, a descendant of David's, could not have married her." Here, by the way, they might improve the proof, and make it still more subservient to their purpose, by adding (see Art. LXXVIII.) that Mary must have been an heiress, and consequently

for that reason, durst not marry out of her tribe. But how surprising is it, that such incongruous blunders could possibly have been committed? Luke expressly says, chap. i. 36., that Mary and Elizabeth were relations, but Elizabeth's husband was a priest. Hence her connection with Mary is a most manifest proof, that Israelites of one tribe might marry into another, and that a priest, for instance, might marry a virgin of the house of Judah, or a descendant of Judah marry the daughter of a Levite.

It was even in the power of an Israelite to marry a woman born a Heathen: although this also is denied by those who press upon Moses a law of their own. The statute in Deut. xxi. 10,—14. already illustrated, puts this liberty beyond a doubt: and he who disputes it, confounds two terms of very different import and extent, *Heathen* and *Canaanite*. An Israelite might certainly marry a Heathen woman, provided she no longer continued an idolatress; which however, she could not, as a captive and slave within Palestine, have been even previously suffered to be; but all marriage with Canaanitish women was, by the statute Exod. xxxiv. 16., prohibited. In that statute, Moses had it particularly in view to prevent the Canaanites, who were both an idolatrous, and a very wicked race, from continuing to dwell in Palestine, and by inter-marriages with Israelites, at last becoming one people with them: for he dreaded lest they should infect them with their vices and superstitions.

Should I here be asked, “*Whercin then did Solomon sin, who in 1 Kings, xi. 1, 2., is certainly censured for marrying Heathens?*” my answer would be (1.)

that among the wives and concubines whom he took, there were Sidonians, who belonged to the race of Canaanites, and these were expressly forbidden ; (2.) that, contrary to the positive prohibition of Moses, he kept a great seraglio ; (3.) that he permitted his wives to practice idolatry ; and (4.) that he was himself led into it also: as we have only to read down to verse 8. to be convinced.

I have only farther to observe, what I have remarked before, that the people of Israel must, in consequence of the toleration of polygamy, have been in a state of continual decrease, had not marriages with foreigners, and particularly with the captive daughters of the neighbouring peoples, been permitted.

CHAPTER VII.

OF MARRIAGES BETWIXT NEAR RELATIONS.

ART. CI.

General Remarks on the Present Application of the Mosaic Laws to the Marriages of near Relations.

§ 1. I now proceed to consider the prohibition of marriage between near relations. On this subject I have treated at full length in a particular work, entitled, *a Dissertation on the Mosaic Laws prohibitory of the Marriage of near Relations*; of which Dissertation I here give but a brief abstract, and differently arranged. Those who do not fully understand any part of this abstract, and miss the proofs, and the answers to certain doubtful points, must have recourse to that treatise; and in order to lessen the trouble of so doing, to the reader, I shall take care to specify the several paragraphs, in which the different topics are treated. As I must quote it so very frequently, I shall take the liberty of abridging its title, and cite it thus, M. L. (marriage laws,) and not from the first edition in 1755, but from the second of 1768.

The laws of Moses, prohibitory of the marriages of near relations, are to us by far the most important and interesting part of the Mosaic jurisprudence, because

among protestants they still hold a certain degree of validity. For although it is not from the laws of Moses, but from national regulations, in general much stricter and more comprehensive, that we have to determine what marriages are lawful among ourselves, and in any other country, yet where *protestant* princes are applied to for any dispensation from the national laws, the decision, in general, is made to depend entirely on the Mosaic statutes. With their own, or with the Roman and Canon marriage laws, they may dispense as they please: but with the laws of God, they can have no right to take such liberty, unless there be any of them which God himself has declared dispensable. (M. L. chap. ix.) Now as it is believed that the laws against the marriages of near relations, contained in the xviii. and xx. chapters of Leviticus, are obligatory, not on the Jews only, but on all men, and form part of the universal law of morality, because Moses describes the forbidden marriages, as that abomination for which God punished the nations of Canaan; (M. L., §. 24.—26.) it thence follows, that a christian prince, from whom a dispensation is solicited, has first to enquire whether or not the marriage in question be one of those, which Moses has declared an abomination, and such, as in every christian country, ought to subject the parties to punishment. Neither the advocate employed to draw up the petition, if he wish it to be received and listened to, nor the person whose opinion is desired, whether he be a theologian or a lawyer, has any occasion in such a case, to trouble himself about the tenor of the Roman law on the subject, and whatever he may advance concerning it, must be quite su-

perfluous as to the main question, or rather serve only to darken it the more: for no christian prince can entertain any doubt, as to his power of dispensing with the national, or with the Roman and Canon law: but every thing here depends on the Mosaic law, and especially on the meaning of the xviii. and xx. chapters of Leviticus; and the more distinctly they are explained, all reference to other laws being omitted, the more easily will the sovereign be moved to grant the dispensation, if the case really admit of it.

To Catholics, indeed, the investigation of the Mosaic laws is not of so much importance, because by the decision of the council of Trent, the Pope can dispense with them*. Ecclesiastical history, however, furnishes one instance, where, to the interests of the Romish church, so much depended on a correct and convincing exposition of the Mosaic marriage-laws, that the want thereof, in the reign of Henry VIII. lost her the kingdom of England. That prince, it appears, had a serious scruple of conscience as to the power of the

* Sess. 24. cap. 3. "Si quis dixerit, eos tantum consanguinitatis et affinitatis gradus qui Levitico exprimuntur, posse impedire matrimonium contrahendum, et dirimere contractum, nec posse Ecclesiam in nonnullis illorum dispensare, aut constituere, ut plures impediant aut dirimant, anathema esto."—And in Sess. 24. cap. 5. *ad finem*, "In secundo gradu nunquam dispensetur, nisi inter magnos principes, et ob publicam causam." Here, however, many a good Catholic, who is not a *great prince*, may, in regard to dispensations obtained at Rome, entertain a scruple of conscience, to the removal of which, a fuller knowledge of the Mosaic law will not a little contribute; for these dispensations, in the *second degree*, are now granted at Rome, not only to *great princes*, but very often to mere noblemen, concerning whom the Council says nothing.

papal dispensation to annul the laws of God, and, of course, as to the lawfulness of his cohabiting with Catharine, his brother's widow, whom he had married by virtue of such a dispensation ; and as, with a very narrow conscience, he had not by nature the gift of continence, and the Pope was unable to give him a satisfactory solution of his doubts, and unwilling, either from a dread of the displeasure of Charles V. or from a regard to the fundamental principles of Catholicism, to dissolve his marriage with Catharine ; the consequence was, in the first place, his separation from the Romish church, and in the next, the Reformation of England. On that occasion, a clear and convincing answer, satisfactory to the conscience of the king, would have been of great importance to the Pope ; for according to what I conceive to be the meaning of the Mosaic statutes on the subject, this marriage really did admit of a dispensation, and was prohibited only by ecclesiastical law ; and allowing even, that at first it had not been dispensable, still, after having been once concluded, it ought, on the very principles of the Mosaic law, to have been continued.

In regard to these important statutes, divines, as well as lawyers, are commonly divided in their sentiments, and patronise one or other of the *two* following opinions, which I must specify before I proceed farther.

1. Some of both faculties hold no marriages forbidden, except such as Moses has himself expressly mentioned and prohibited. They hold, for example, marriage with an aunt as forbidden, because Moses pro-

hibits it. But marriage with a niece, on the contrary, although the relation is equally close, they deem not forbidden by Moses, and, of course, capable of dispensation.

To this opinion I myself assent, in so far as regards the exposition of the Mosaic statutes themselves. It is at present very generally admitted, not only by lawyers, but also by divines. In *Prussia*, it is acted upon under the present king. (M. L. §. 116, Note 1.) In *Hanover*, dispensations had for a long time been granted in the case of marriage with a wife's sister, which is not forbidden by Moses, although he prohibited the marriage of a brother's widow, where the relationship is equally near ; and the late King George II., since the year 1755, was wont also to allow the marriage of a niece. The present *juridical* faculty, in like manner, admit this opinion, and are wont, in their *responsa* to consultations, to regard as capable of dispensation, those marriages that are not manifestly forbidden by Moses, referring to my treatise on the subject. In our *theological* faculty, opinions are divided ; but most voices are in favour of the milder interpretation ; and hence *their* deliverances also coincide with the doctrines, which I here lay down ; and those marriages of which Moses takes no notice, such as that with a wife's sister, or a niece, &c. they declare dispensable.

2. Others more strict, are inclined to extend the limits of the Mosaic laws, by the aid of inferences, and to believe, that not individual marriages, but *degrees*, are prohibited ; as, for instance, that because it is forbidden to marry an aunt, so, in like manner, it

is not allowable to marry a niece, who stands in the very same relation.

This is the common opinion of divines. In Hanover, it has for some years been in so far authoritative, that in these marriages no dispensation is granted, except in the case of a wife's sister. The present king having been repeatedly solicited for dispensations, consulted the consistory at Hanover, in which, as the voices were divided, the *argumentum a tutiore*, at last prevailed; and the consistory returned for answer, that as the point was doubtful, the best plan would be to take the safest side, and not to grant them.

3. Besides these two opinions, which are the most common, there is yet a third, which is by far the mildest of the three. Moses does not reckon all the marriages which he prohibits, among those abominations for which God punished the other nations, but only those entered into with the very nearest relations, such as parents, children, brothers, or sisters. We ought, therefore, in regard to the Mosaic marriage-laws, to make this distinction, that some of them are *moral*, and with these a prince cannot conscientiously dispense; while others that are merely *civil*, and had been given for the Israelites alone, may admit a dispensing power. For instance, even the marriage of an aunt may on that principle be allowed, although prohibited by Moses.

This is the system of the late Professor *Baumgarten*, as stated in his (*Theologische Bedenken*) *Theological Doubts*, although in other terms, and perhaps more comprehensively than I would admit. I cannot deny, that to me, for reasons which I shall adduce in

the sequel, it appears equally probable. It is, however, very uncommon, and is not likely to be made the foundation on which a prince's counsellors will decide upon any question of dispensation; and therefore, in soliciting a dispensation that may be obtained on the principles of No. 1. it will not be prudent, but rather serve to increase the difficulty, to appeal to *this* principle, which, though in my opinion the true one, is yet not familiar to those who decide on such occasions.

A sovereign, therefore, has, in my judgment, a right of dispensation in two sorts of marriages, which are frequently the subjects of controversy;

In the *first* place, in those which Moses himself has no where expressly forbidden, and which other people have affirmed to be forbidden only from certain inferences deduced from his laws. For, that he himself never thought of such inferences, and that they are contrary to the objects he had in view, I shall hereafter shew. Indeed I have, in ch. vii. of my treatise on the Mosaic marriage-laws, already shewn it more in detail, than is here in my power. Dispensations, in such cases, are frequently granted by christian princes, and advised by many faculties, such, for example, as those of theology and law at Gottingen.

In the *second* place, in those which Moses, although he *has* prohibited, yet does not (such at least is my opinion), include among the abominations, for which God punished the Canaanites, and of course, only interdicts the Israelites from contracting, on civil grounds. Should I, however, be wrong in this, there is yet another ground on which these marriages admit

46 *Hebraisms relative to prohibited marriages.* [Art. 102 of dispensation, and on which I have expatiated, in ch. ix. of my treatise ; namely, that God himself, in a certain case, dispenses with them, and consequently cannot but be pleased, when in similar cases, and from alike weighty considerations, man dispenses with them. Dispensations of this sort, however, are not often granted by christian princes, because they are generally considered as unlawful and repugnant to the doctrine of the Bible.

ART. CH.

Of certain Words and Expressions used by Moses in his Laws, on the Subject of Marriage among Relations.

§ 2. THE reader will have remarked, from the perusal of Art. XCVIII., that the Mosaic law has its peculiar terms, and that in some cases they are not without obscurity, and stand in need of illustration. This is eminently the case here ; and it is so much the more necessary to take notice of certain terms of relationship, that occur in the xviii. and xx. chapters of Leviticus, because their meaning has been much disputed, and expositors have, in defence of a favourite system on the subject of marriage and dispensation-laws, or in order to steer clear of certain supposed difficulties, ascribed to them significations incapable of proof.

What Moses prohibits, he commonly terms *uncovering*, or *beholding the woman's nakedness*. This is usually and correctly considered by expositors, as a general expression, comprehending the idea of coha-

hibition, both *in* the married state and *out* of it. For in their use of this expression, the Hebrews presuppose, that he who uncovers the nakedness of a woman, will not stop there, and therefore, in mentioning the previous act, they include its immediate consequence, that is, carnal connection; just as we do, when, by a similar Euphemism, we speak of *sleeping with a woman*.

Others however—but hitherto they have remained nearly singular in this opinion—deny that Moses ever gave any law prohibitory of the marriage of near relations, and therefore maintain that this expression is to be understood, either of whoredom only, or of denudation, in the most strict and literal sense, and merely proceeding from wanton mirth. But that this notion is inadmissable, I have, in §. 12.—14. of my treatise on this subject, shewn at greater length than I can here allow myself.

There is, however, one remark of particular importance, which I must here repeat, from §. 11. of that treatise, namely, that it is in general, the man only, of whom it is said, that *he* uncovers the nakedness of the woman; he being represented the aggressor, and the woman as more modest than to make the first advances, and uncover *his* nakedness. Hence the different statutes are all addressed to the male sex, and expressed by words in the masculine gender; as *thou*, (referring, for instance, to a brother, or any other male), *shalt not uncover her* (thy sister's) *nakedness*. It is however, though but rarely, said, likewise of the woman, as in Levit. xx. 18., that *she uncovers her own nakedness*, when she gives a man liberty to lie with

her; and in like manner, in the preceding verse of the same chapter, we find the expression, *she hath seen his nakedness*.

In his statutes relative to marriage, and sometimes, also, in other parts of his law, Moses expresses near relationship, either by the single word, שָׂר, (*Scheer*) *pars, scil. carnis*, or more fully by the two words, שָׂר בָּשָׂר, *Scheer basar, pars carnis*. (See M. L. §. 15. —18.) The meaning of these terms has been the subject of much controversy. Some would translate them *flesh of flesh*: others, *remnant of flesh*. But those that say most of their etymology, are in general not so much oriental philologists, as divines and lawyers; and yet we should rather like to have an illustration of any obscure etymological question, from those who unite with the knowledge of Hebrew, an acquaintance with its kindred eastern languages. There are some also, who would make this distinction between *Scheer*, and *Scheer-basar*, that the former means only *persons immediately connected with us*, such as *children, parents, grand-children, grand-parents, and husbands or wives*; and the latter, those who are *related to us only mediately, but in the nearest degree*, such as, *our brothers and sisters*, who are properly speaking, *our father's flesh*. Others again think, that *Scheer-basar* means nothing but *children and grand-children*. These conjectures, however, are by no means consonant to the real usage of the language, in the Mosaic laws themselves; for in Levit. xxv. 48, 49., *Scheer-basar* follows as the name of a more remote relation, after brother, paternal uncle, or paternal uncle's son; and in Num. xxvii. 8.—11., it is commanded, that "if a man die

“ without sons, his inheritance shall be given to his
“ daughters ; if he have no daughters, it shall pass to
“ his brothers, of whom, if he has none, then to his
“ paternal uncles ; and if these also are wanting, it
“ shall then be given unto his nearest *Scheer* in his
“ *family*.” It is manifest that in this passage, *Scheer*
includes those relations that follow in succession to a
father’s brother.

If the reader wishes to know what these words etymologically signify, I shall here just state to him my opinion, but without repeating the grounds on which it rests. *Scheer* means, 1. *a remnant* ; 2. *the remnant of a meal* ; 3. *a piece of any thing eatable*, such as *flesh* ; 4. *a piece of any thing in general*. Hence we find it subsequently transferred to relationship in the Arabic language ; in which, though with a slight orthographical variation, that nearest relation is called *Tair*, or *Thsäir*, whom the Hebrews denominate *Goël*. In this way, *Scheer*, even by itself, would signify a relation.—*Basar*, commonly rendered *flesh*, is among the Hebrews equivalent to *body* ; and may thence have been applied to signify relationship. Thus, *thou art my flesh or body*, (Gen. xxix. 14.) means, *thou art my near kinsman*. When both words are put together, *Scheer-basar*, they may be rendered literally, *corporeal relation*, or by a half-Hebrew phrase, *kinsman after the flesh*. In their derivation, there are no farther mysteries concealed, nor any thing that can bring the point in question to a decision ; and what marriages Moses has permitted or commanded, we cannot ascertain from *Scheer-basar*, frequent and extensive as is its use in his marriage-laws ; but must determine, from his

own ordinances, in which he distinctly mentions what *Scheer-basar*, that is, what relations are forbidden to marry.

For all prohibited marriages, we Germans have but one general term, *Blutschande* (incest); but for certain descriptions of them the Hebrew law has specific terms. (M. L. § 19.) Thus,

1. *Zimma* (זִמָּה) in its strictest sense, as a forensic term, is when a man marries his wife's mother or daughter, which Moses punishes with death, Lev. xx. 14. The most probable derivation and explanation of this word that I can find, is the following: *Zimm*, in Arabic, means *marriage*, and *Zimma*, the state of guardianship (*Clientela*), from the word *Zamm*, to connect. It would seem that the Hebrews had applied this word to express incest, and marriage with a wife's daughter or mother; because the woman, in such a case, is, as it were, under the protection and guardianship of the man; under which circumstances her safety and virtue is likely to be best secured by an absolute prohibition of their marriage, under the severest penalty; for seduction commonly takes place under the hope of marriage. Among the Arabs, marriage with step-daughters is forbidden, on this footing, *that they are under your care or protection*, (Koran, Sura IV. 27.); expressive of the very same ground of prohibition that lies in the word *Zimma*.

With this application of the word, agrees likewise its extra-forensic and more general use, when applied to express unchastity, in other parts of the Bible, for it signifies,

(1.) In Ezek. xxii. 11. whoredom with a daughter-in-

law. In the Mosaic statutes, as we shall immediately see, this crime has a particular name of its own, *Tebel*.

(2.) The crime of a father, who, though the natural guardian of his daughter's chastity, allows her to commit whoredom for gain; or of the husband, who lets his wife commit adultery without resenting it, and knowingly overlooks it, Lev. xix. 29. Ezek. xvi. 43.

(3.) When the atrocious act of attempting to seduce the wife of a friend under the pretence of friendship, is to be represented in its blackest colours, it is called *Zimma*. (See Job xxxi. 9,—11.) The friend of the husband ought to be the guardian of a wife's chastity, and yet becomes her very seducer.

2. Another forensic term relating to the present subject, is *Tebel* (תבל), which, in the law, signifies *uncleanness*, or marriage with a daughter-in-law, Lev. xx. 12.; but is at the same time the proper law-term for defilement with a beast, Lev. xviii. 23. The radical word signifies in Arabic, *to be mad with love*; and hence these two gross acts of lust, to which Moses annexed the punishment of death, seem to have received this designation.

3. *Chesed* (חסד) is the forensic name of marriage, or incest with a sister, Lev. xx. 17. The word in its common Hebrew acceptation in other places, signifies sometimes *nuptial love*, and sometimes that *natural affection* (στοργή) which subsists between parents and children, brothers and sisters. Here probably it is meant to indicate a mixture of nuptial and natural affection, although indeed it would be possible to find another origin for it.

4. *Nidda* (נדה) is the term used by Moses to de-

note the marriage of a brother's wife, (Lev. xx. 21.) except in the case of the Levirate-law. *Nidd* in Arabic, means *equality, likeness, a compeer*, and hence a *rival*, which last may perhaps be the origin of the name. Where the widow descended to her husband's brother hereditarily, the expectance of such a reversion was somewhat dangerous to the safety of the husband's life; for persons who can entertain such a prospect, will probably too soon obtain each other's confidence, and venture by looks and words to give each other to understand the possibility of their one day having a closer connexion; and something beyond looks and words will be the natural consequence of such insinuations.

Of these four terms, only the first and last, *Zimma* and *Nidda*, serve to throw any light on the Mosaic marriage-law. The other two I have introduced only to complete the list, and to gratify that curiosity which may wish to have a thorough knowledge of the technology of a foreign law.

Throughout the whole Mosaic law, the *widow* is denominated *wife*.

ART. CIII.

What we must presuppose in our Investigation of the Reasons for which Moses prohibited the Marriage of Near Relations.

§ 3. Of the reasons for which the marriage of near relations has been prohibited among so many nations, very different opinions have hitherto been entertained.

Moses nowhere explicitly mentions what he disapproves in such marriages, and wherefore he has forbidden them ; but only thus much in general, that he does so, because they are sinful, and had been so, even before the giving of his law, to such a degree, as to give God reason to punish the Canaanites on account of them. (M. L. § 42.) Consequently, the main reason for which Moses forbids them, and that which makes them sinful on the principles of philosophical morality, is one and the same ; and it must have been of such a kind, so obvious and unquestionable, as that the Canaanites could discover it before the law was given ; and hence, if we are led to form any conjecture as to any cause of the prohibition, which does not at the same time constitute a sin according to philosophical morality—as for instance, to ascribe it to a regard to the prosperity, or to the peculiar œconomy of the Israelites,—we may be sure that *that* is not the principal cause, and that we have to search for it somewhat farther. At the same time, however, in regard to some marriages which Moses does not reckon among the Canaanitish abominations, but only prohibits for the sake of more security, and, overstepping, as it were, the law of nature only a step or two, it is possible that he may have been influenced by secondary considerations. But of these I do not yet speak ; but only of the main reason of the prohibition of those marriages betwixt near relations, which he declares abominable, and considers as criminal even in the Canaanites, who had not his law.

It would appear that Moses had prohibited such marriages for *one* great reason only ; at least he com.

prehends them under this general precept, *Thou shalt not marry thy nearest relations*; without dividing them, as Justinian has done, into the two following classes :

1. *Inter eas personas, quæ parentum, liberorumve locum inter se obtinent, contrahi nuptiæ non possunt.*

2. *Inter eas quoque personas, qui ex transverso gradu cognationis junguntur, est quædam similis observatio, sed non tanta.*

ART. CIV.

Horror naturalis is neither the Cause of the disallowance of such Marriages in general, nor of the Mosaic Prohibition in particular.

§ 4. SOME authors amuse us with the fiction of a natural abhorrence (*Horror naturalis*) which mankind are said to feel against such close connections, and by which Nature herself points out that they are sinful. But granting that this were no imaginary idea, still it would be a very insecure foundation on which to rest a precept of general morality; for reason, and not our desires and aversions, is the true source of morality. A natural desire or aversion *may*, perhaps, first discover our duty to us; but it is neither the primary cause, nor yet of itself a sufficient proof of that duty. The very powerful and universal propensity to coition is far from binding us to the duty in question; and our abhorrence of certain ill-tasted and ill-smelling things, of which many may have valuable medicinal qualities, imposes no obligation on us to avoid them, but only keeps us from making them our usual food.

But putting this entirely out of the question, there is no proof at all of the existence of that *Horror naturalis* on which such stress has been laid. Let any person ask himself whether he feels it; and if he thinks he does so, whether it is not merely the effect of education, or of difference of age? A person of 20 years of age, will certainly not fall in love with an aunt at the age of 50; but if she were as young as himself, and he had never heard a word of prohibitory laws, would he ever feel what he now calls a *Horror naturalis*, at being connected with her.

The history of mankind confutes the doctrine of our natural abhorrence of such connections. Many of the great nations of antiquity, such as the Phoenicians, Egyptians, Persians, Athenians, and Lacedæmonians, were wont to marry their nearest relatives; and if it be said that these civilized nations had, by an abuse of reason, refined away their natural propensity, there are yet whole nations of savages, in whom the natural propensities must be in the strongest and most unaltered state, who are so far from having any *forbidden degrees*, that they make it the duty of a brother to marry his sister. The Spaniards found this the case throughout all America; and the North American Indians, who are still perhaps as much in a state of nature as any people whatever, marry their sisters without feeling the least reluctance. It is, no doubt, possible, that vicious passion may overcome a natural propensity; and there might once, perhaps, be an instance of an individual monster, who did not feel the impulse of nature, just as we find monsters destitute of a limb, or other bodily organ; but among

whole nations that impulse can be no more wanting, than there can be found whole nations, to whom nature has given a limb or a sense less than ourselves.

At any rate, Moses does not seem to have had any idea of the supposed *Horror naturalis*, or to have framed his laws in obedience to it. Could that Moses, who expressly informs us, that God, who might have created the first married pair without any previous relation, did purposely create them in the closest possible connection, and that the very first words in which Adam expressed his natural inclination towards Eve, were, *This is flesh of my flesh, and bone of my bone!* Could *he* have thought that God had implanted in man any natural aversion from a marriage with her who is his relation, and a part of his flesh? The impulse of nature certainly never could be so unaltered and so lively in any man, as in the first father of mankind.

ART. CV.

Whether the Children of such Marriages do physically degenerate?

§ 5. NEXT to the doctrine of the *Horror naturalis*, our attention is naturally called to the examination of the hypothesis of *Buffon* and *Hutcheson* on this subject, which certainly looks much more rational. They imagine, that by the intermarriage of near relations, the human race might perhaps degenerate in a physical sense, and in their bodily frame, just as we see that horses degenerate, when the stallions and mares

are too nearly connected, and become nobler when these are brought together from different climates. Were this notion just, and consonant to experience, those who believe in the doctrine of *Horror naturalis*, might avail themselves of its aid, and affirm, that Nature, by this innate aversion, meant to warn us against contributing to the degeneracy of our race, and thus to prevent it.

But these two authors had not a knowledge of horse-breeding sufficiently intimate and extensive. They had only heard of it afar off. I must, therefore, state what has been really ascertained in regard to horses, and that under the following particulars.

1. In breeding horses, the very best individuals are studiously selected, because the breed *will* degenerate, if middling or bad horses are taken at random. Hence it is obvious, that those which are nearest, whether in blood or situation, should not always be allowed to come together, because, very probably, they are not the best and noblest; but that mares and stallions should be picked out of a large number, and in different situations.

This, however, cannot be at all applicable to our marriage-laws; for as every man has an innate right to marriage, we can have no title to deprive those that are but tolerably well formed, or are deformed, of the exercise of that right, and select only the most robust for the propagation of our race.

2. In order to improve the breed of horses, stallions and mares are selected from quite different climates, and are brought together with the view of obtaining a still nobler breed, in which their excellencies shall

be united. Thus to breed race-horses, an English mare is covered by an Arabian stallion ; because, by the union of English size and bone with Arabian lightness and mettle, an increase of speed is obtained.

But neither does this apply to our marriage-laws ; for neither Moses, nor any other legislator, requires that a man and his wife shall come from opposite climates : that a German, for instance, shall marry a woman from Barbary or Circassia.

3. When horses are brought together that are the produce of the same parents, (I might say that are brother and sister, for that they are so, is certainly true), their breed is not one whit less noble, though smaller and finer limbed ; and if, again, horses of that breed are united, the third race proves still smaller and finer limbed, just like the horses of Oeland, and the Scottish Highlands, but without the least degeneracy in point of shape or mettle ; only they are too delicate and little for use.

Of this fact, Buffon and Hutcheson knew nothing, nor indeed could know, because the experiment has been but lately made in the Hungarian studs. It shews pretty clearly how it happens, that in countries where horses run wild, the breed is beautiful, mettled, and wild, but small and slender ; in a word, why it becomes like that of Scotland and Oeland. In the mean time, this is the only remark of the three, which we can venture to transfer to the subject of marriage-law, if experience should confirm that the same is the case with mankind likewise.

4. Although in great studs, the stallion often covers a mare of his own getting, that is, the father his

daughter, no degeneracy, or diminution of size, has been observed to follow, nor yet any other detrimental consequence whatever.

If then there is any truth at all in the conclusion drawn from horses to the human race, it cannot do more than shew, that where brothers and sisters marry, their children *may be* smaller in size; but not that any degeneracy takes place in spirit, beauty, or otherwise. And on this point, experience should be consulted; for the bare conclusion from horses to men, who, even considered as animals, belong not to the same class with horses, is not very logical. It is only sufficient for prompting to enquiry, not for implicit belief, or for decision,

Among those ancient nations, in which it was usual for the nearest relations to intermarry, the Egyptians, Persians, Phœnicians, Athenians, Lacedæmonians, we do not find the least trace of corporeal degeneracy; and at any rate, Moses cannot have founded his laws on the observation of any such effect; for he says both in the introduction and conclusion of his marriage-laws, that the Canaanites, by the universal prevalence of this practice, brought the wrath of God upon themselves, and yet he describes these Canaanites as people of gigantic stature compared with the Israelites.

The case of the Americans may be thought to render my assertions doubtful, and to lend the appearance of truth to the doctrine of degeneracy. For when America was discovered by the Spaniards, the inhabitants lived in incest; and among the North American Indians, with whom we are best acquainted through the medium of English accounts, it is still very com-

mon for brothers and sisters to marry. It will be said that they are altogether a degenerate race of men ; that among them, though in a savage state, we do not find that largeness of stature, which in our own savage ancestors, the Germans, excited such amazement ; but only people of a very middling size, and who should rather be called small than large. When the Spaniards came first to America, they found the inhabitants a puny race, that could not bear any burdens. They are destitute of beards ; some of them without eyebrows ; and all of them without either hair on their bodies, or around the *pudenda*. The men have little inclination towards the female sex, and cohabit with them almost only from duty. They have also milk in their breasts, so as to be able to suckle a child. Mothers have milk much longer than with us ; and children must be nursed for a very long time, because they are too weak to bear solid food. In the female sex, the menstrual evacuation is more scanty than in the old world ; and the people are said to be without courage, although patient, or rather insensible to pain.

This detail of their degeneracy is mostly true ; although I believe, that in regard to the last mentioned point, an exception should be made in favour of the North American tribes, whom the English accounts represent as brave, and though in many respects savage, yet very respectable in point of understanding, and peculiarly so in point of eloquence. But although I had it not in my power to make any exception at all, still the instance of the Americans avails nothing to the decision of the question before us. For,

1. In the first place, even the animals in America

degenerate ; in so much that dogs lose their bark, and lions their boldness. There must, therefore, be some other more general cause of the degeneracy of nature in that part of the world, which affects men and animals alike. It is common to ascribe it to the humidity of the country, from the marshes with which it abounds. On this I do not pretend to decide ; but I doubt much the propriety of thus accounting for the phenomena in question, because Germany at the period when it produced our brave and brawny ancestors, who were able without iron to beat the armies of Rome, was perhaps as marshy as America. This, however, is certain, that there can be no ground for imputing to marriages between near relations, a species of degeneracy that affects animals as well as the human species, and that too, probably, in a much stronger degree.

2. Even if such marriages could be said to contribute any thing to that degeneracy (which I will not entirely deny) still it would perhaps take place only indirectly, in consequence of thus rendering whoredom more universal, (as we shall see under Art. CVIII.) which spreads the *lues venerea* so terribly, that whole nations of the Americans are infected with it. Where that disease exists, and has existed for several generations, human nature must certainly degenerate. But this has no relation to our present inquiry, but comes under another cause of prohibited marriages, which will be considered in Art. CVIII.

3. The supposed effects of the intermarriage of near relations, namely, diminution of stature, and detrimental delicacy of frame, are not found to take place among the Americans. They are not, indeed,

a large race; still, however, not smaller than men usually are among ourselves, but of a middling size. The Spaniards found them but little less than they were themselves, and that in a warm climate, where instances of large stature are rare. And,

4. This mediocrity of stature is the less safely to be imputed to the intermarriages of near relations, that, with the exception of insects and snakes, the animals in America are much smaller than in other parts of the world.

Upon the whole, therefore, the instance of the Americans is at best but neutral, until our information be more complete; while the example of the Persians, Egyptians, &c. is quite decisive against the degeneracy said to be occasioned by the cause in question.

ART. CVI.

The Object of the Prohibitory Statutes was neither to promote the Closer Union of Mankind at large by the means of Marriage, nor yet to prevent the excessive Power of Particular Families.

§ 6. (1.) It cannot have been the intention of these laws to oblige men to marry into the families of those that were to them strangers in blood, and thereby to unite the whole human race, as it were, into one family. (M. L. § 46.) They would, in fact, have been quite inadequate to that end, because they authorized marriages between the children of brothers and sisters; and such at any rate cannot have been the design of Moses, who, in the book of Genesis,

describes these very marriages, as those of which the pious ancestors of the Israelites were so very desirous for their sons, that they almost expressly enjoined them; and who himself distributed his whole people into tribes and families, which had each its particular head, and formed a small commonwealth within itself, as we have seen in Art. XLVI. Besides, how could he have represended the incestuous marriages of the Canaanites as that abomination for which God punished that whole people, if his own laws had been nothing more than a more refined political or moral artifice, to cement families more closely together? The neglect of any such artifice is certainly no abomination.

(2.) As little can these laws have been intended to prevent particular families from becoming by intermarriages too powerful and dangerous to the state. (M. L. § 53, 54.) By marriages within itself, a family will not become more powerful than it was before, for it acquires nothing that it had not already. On the other hand, rather is it likely, by intermarriage with other powerful families, to become too powerful and formidable to the state, either by the property of two rich families being united in one common heir, or by their acquiring, in consequence of the connexion, an undue preponderance in numbers and strength. Moses, however, had no such object in view; for in the only case in which marriage could contribute to the enrichment of a family, that is, when the daughter was her father's heir, he enjoined her to marry within her own tribe, that her property might be preserved to it. What I before mentioned, therefore, of Moses representing incestuous marriages as a criminal abo-

mination, and of course prohibiting them, for a better reason than the political interests of his people, is here to be considered as again repeated.

ART. CVII.

Concerning Respectus Parentelæ.

§ 7. NOTHING is more common than to endeavour to account for the prohibitory statutes concerning marriage, on the principle of a *Respectus Parentelæ*; that is, from this consideration, that, from the moment we enter into the married state with her, a mother, or an aunt that is in the place of a mother, becomes subjected to us, and a daughter on a footing of equality with us. Now I readily grant that *Respectus Parentelæ* was in force in the Roman law, as it is expressly mentioned in the *Institutions*; although at the same time, I doubt whether the oldest Romans, in their abhorrence of incestuous marriages, thought of any such thing; and rather believe that the Roman lawyers, who were generally addicted to the Stoical philosophy, may have presented the ancient Roman law with this reason from that philosophy. We must not, however, confound the Mosaic and Roman laws together. Moses nowhere says a word of *Respectus Parentelæ*; and in regard, at least, to those marriages which he declared abominable, and which God was punishing even in the Canaanites, he can scarcely be thought to have had any view to it. (M. L. § 48—51.)

I cannot comprehend, for my part at least, how the principle of *Respectus Parentelæ*, should make it sin-

ful to marry a woman, whose relationship previously entitles her to veneration or obedience. By her concurrence to a marriage, she gives up her prior right, and releases us from the duty which we owed her on that score. Nor can her departure from that right be justly censured, or declared invalid, or displeasing to the supreme legislator, because it was a natural right; for we all by compact give up much more important natural rights, and other natural relations, without incurring the reprehensions of either moralists, lawyers, or divines. All men are naturally equal and free; but this equality and freedom they forego when they become subjects, insomuch that they even give the national magistrate a power over their lives. In a state of nature, every father would be magistrate in his own family; but in a civil state, he renounces even that right, and commits it into the hands of the national magistrate; which is a consideration the more serious, on this account, that he thereby places a third party, viz. his children, as well as himself, in worse circumstances, if that office happen to fall into the hands of a tyrant. And surely if we may do all this without sin, an aunt may very safely denude herself of the very trifling and dubious right that she may have with respect to the son of her brother or sister; and even a mother may resign the claim she has upon her son's obedience.

Who ever made it sinful in a son to undertake any authoritative function which places his father under him? Joseph brought his father into Egypt, in which he himself ruled with almost unlimited power; yet no one ever called Joseph, on that account, an impious

man,—a transgressor of the fifth commandment, and of the eternal law of nature. Nay, this may go still farther; for a son may, particularly in an elective monarchy, become king, and thereby acquire the power of life and death over his father. Even among the Israelites, David and Saul seem to have mounted the throne during the life of their fathers. If then this departure from *Respectus Parentelæ* involve no sin, surely that far more moderate and gentle violation of it which takes place when a son marries his mother, or her sister, cannot be the cause of such marriages appearing so abominable to Moses, and drawing after them the vengeance of Heaven. In fact, however, it would not be absolutely impossible for the veneration and subjection now spoken of, to subsist without prejudice to the married state, in every thing wherein marriage is not properly concerned. For we have examples of a sovereign princess marrying a subject, or conferring (as Queen Anne did) one of the high offices of state on her husband, without admitting him to be her partner in the government. In such a case, the husband is a subject, and the wife, though the expression sounds somewhat masculine, is *lord* of his life and death.

In some of the marriages prohibited by Moses, there is either no violation of *Respectus Parentelæ* in general, as, for instance, in that of a sister, or brother's widow; or none, at least, according to the particular circumstances of the people to whom he gave his laws. He forbids marriage with a step-mother; but the Hebrews did not represent such a person as a mother, nor did they call her so. She was with them but the

father's wife, to whom, in countries where polygamy prevails, no filial duty is due from the children of another woman. Very often she was nothing but the father's concubine ; and the son, to whose mother she was a rival, and perhaps an enemy, was not likely to feel any filial *Respectus Parentelæ* towards her. That principle, therefore, could not be the foundation of the prohibitory marriage-law in these instances. Of our revering an aunt younger than ourselves, as we would a mother, the Bible says not a word ; and from Philosophy I can adduce nothing in support of this doctrine of the Roman law, which savours strongly of the Stoical ideas of the Roman civilians.

There is one thing, however, which I will readily admit, (M. L. § 52.) namely, that where the son commonly remained in his father's house, it could not be very agreeable to his parents, to find him marrying their sister, and to see a person whom from infancy they had regarded as on a footing with themselves, become, by a marriage with their son, so very much degraded below them, and subjected to their authority. There would, indeed, be here no violation of respect due to a father's sister, (for she had herself assented to its cessation,) but to the parents, *if yet alive*, it could not fail to prove a source of vexation. Under these circumstances, I by no means wonder, that even before the time of Moses, although such marriages were not properly held forbidden, parents, nevertheless, with all their anxiety to see their sons married with near connections, did not usually propose to unite them with their own sisters, but with their sisters' daughters, and that few sons vexed their

parents by marrying the sister of their father or mother. Only, therefore, in the case of parents being yet alive, could *Respectus Parentelæ* have operated as a concurring cause of the prohibition. It is not, however, the sole cause of it, as we shall soon see.

ART. CVIII.

The true Cause of the Prohibition is, that without it, Whoredom, and early Corruption in Families, cannot be prevented.

§ 8. THE real reason for which a people, that would avoid being overwhelmed with the greatest profligacy, must prohibit incestuous marriages, (that is, those betwixt parents and children, or brothers and sisters, or those with step-mothers, step-daughters, mothers-in-law, and daughters-in-law) absolutely, and without the slightest prospect of dispensation, is this; that considering the free intercourse that such persons have one with another, some of whom, besides, live from their infancy in the same house, it would be impossible to prevent the prevalence of whoredom in families, or to guard against the effects of very early corruption among young persons, if they could entertain the least hope of throwing a veil over past impurity by subsequent marriage. (M. L. § 57,—59.)

The first seduction of a virtuous young woman commonly takes place under the hope of marriage; whether it be that the man actually makes a promise to that effect, and the woman too readily trusts to assurances that may soon be retracted; or that without

any express promise, the innocent victim of seduction considers her seducer, whom she loves, as so true and honourable, and at the same time as so strongly attached to her, that he never can or will abandon her. Without some such expectation, the virtue of a young woman is seldom conquered, because she knows that she has the unpleasant and ignominious consequences of illicit love to bear alone.

Let us now suppose a people among whom it is lawful for a father to marry his daughter, a son his mother, or his father's widow, and a brother his sister, and who regard extra-nuptial cohabitation with such persons, with no farther abhorrence than they do common whoredom ; will not brothers and sisters, who are so perfectly intimate from infancy, that they know very well how to speak to each other of the things which they wish to conceal from all the world besides, and who in the freedom of their intercourse can often be together without any superintendence, and have frequent opportunities of seeing one another, in those circumstances of denudation which stir up wicked lust ;—will they not be very apt to corrupt each other, whenever they begin to feel the first motions of desire towards the other sex, and almost before they know what they are doing ? The period most dangerous to young women commences before they arrive at full growth ; and hence, at this period, extending from their 13th to their 16th year, they are usually restrained, with peculiar care, from unlimited intercourse with the male sex ; but it is not possible, particularly where parents are not in opulent circumstances, to watch the intercourse of brothers and sisters with such effectual

vigilance, as to preclude all danger ; and therefore, if girls, who are so easily led astray, could indulge the least hope of marriage with their brothers, very few of them indeed would remain uncorrupted.

The consequences of this would be tremendous. I will not so much as mention the enmity—the deadly and implacable enmity, that would arise from a breach of promise between those to whom Nature enjoins the tenderest love, but will merely beg my reader to reflect with himself on the effects of depriving a woman of her honour in her early youth. The seduction of a child of 14 or 16 years of age, is, besides, more dangerous to her future welfare, than a *faux-pas* at the age of 20, because she will be heedlessly hurried along in the same wicked course, or else driven to despair ; and then, instead of virgins, the country will be full not only of women that have been dishonoured, but of public venal prostitutes, the pests of the rising generation. And among the few who might not fall into the actual guilt of incontinence, that modesty, which is so ornamental, indeed essential, to female virtue, could not fail to be very much weakened by unrestrained intercourse with persons of the other sex, with whom they might be married, and in whose minds ideas of the like nature must often have arisen.

The same observations may be repeated with regard to marriages between parents and children, but with this difference, that what I mentioned relative to the facility of seducing a young girl, from her want of experience and reflection, does not hold. But on the other hand, again, if a father has it in his power to marry his daughter, the consequences are still more

frightful. No doubt he would not, after dishonouring, be likely to abandon her, or break his promise like a brother ; but where polygamy is permitted, he would take her as a wife in addition to her mother, to whom she would prove an object of such mortal disgust, that between mother and daughter the most unnatural enmity would infallibly arise ; and, on the other hand, where but one wife is allowed, the seduction of a daughter, whenever its consequences began to appear, would arm the father or daughter with poison for the removal of *that* obstacle to their union : and should it remain without the usual consequences, the father would be at great pains to dupe some son-in-law, the honour of whose bed would, besides, never be at any future period secure against his pollutions.

A mother, it is true, could seldom become to the son of her womb an object of such admiration, as to make him fall in love with her ; but here the seduction might be reversed, and a mother of extraordinary concupiscence might lead her own son, in his earliest years of puberty, and even before, while he was yet ignorant of the greatness of the crime, into acts of impurity, whereby he would injure his father in the most ungrateful and abominable manner, and, at the same time, lay the foundation of a premature debility to himself.

And what I have now but mentioned, *en passant*, as to the early debilitation of the male sex, would be still more frequently the consequence of early debauchery between brothers and sisters, if they durst marry together. If *that* became a very common practice, from such progenitors no other than a still weaker,

punier, and more diseased offspring than themselves, could be looked for ; and thus far I *will* allow, that a people by incestuous marriages *may* become degenerate ; whenever it is the consequence of them, that brothers, scarcely arrived at manhood, become too intimate with their sisters. And if that is the case before the years of manhood, the abortive efforts of desire will be attended with those still more lamentable consequences to the health of both sexes, which the legislator may learn from the physician.

But I have not yet exhausted this subject. Among the consequences of permitting such marriages, we have only heard of the universal prevalence of unchastity among the female sex, of the premature debilitation of youths, with something concerning attempts at poisoning. But the mischief does not stop here.

If the majority of the female sex have once so lost their virtue, (under which term I here include modesty, chastity, and nuptial fidelity,) as that the matter is no longer any secret, and a woman has no reason to be ashamed in the presence of others ; while the men, if they wish to marry, have only the choice of worthless, debauched women ; vice, in both sexes, must rapidly advance still farther and farther, and the whole people become so infected with it, as to be at last incapable of subsisting any longer.

It is the fair sex who by their charms and graces give the tone of morals to ours, and as long as they continue but outwardly virtuous, virtue will be held in esteem by the men : the reverse ensues, whenever females can venture to manifest and avow vicious practices. Virtue then becomes the subject of ridicule : men strive to appear profligate ; nor is there

any risk of their not succeeding in the attempt. They will soon become as completely so, as they wish to be thought. And as it, moreover, is the female sex who have the charge of the earliest education of children, their profligacy, if once notorious and flagrant, will, in this respect likewise, contribute no less powerfully to promote the corruption of future generations, than with us, even where fathers are profligate, the virtue of mothers, at least if founded in principle and modesty, contributes to produce a happy effect on the education of their offspring.

But this is not all. Married women, who have early laid aside their modesty and chastity, and carry on their profligacy publicly, and because it is fashionable, render the married state extremely unenticing; and hence proceeds a very general aversion to it among the male sex. Then, as at Rome, when female profligacy became so universal, recourse is had to the enactment of laws to encourage or compel people to marry; but they prove ineffectual. In such circumstances too, divorces cannot be long unIntroduced. To avoid worse evils, they must at length be allowed to every man as often as he thinks fit; and amidst the universal decline of female virtue, and when it is no longer any shame to be divorced, the wife will soon contrive to give the husband sufficient cause to divorce her, whenever she finds another man that suits her fancy better.

When once public manners have reached this stage of corruption, there is but one step more remaining, and that becomes inevitable. The marriages that still take place, from the frequent transitions made by the parties to new connections, become the means of be-

traying their greatest secrets ; and hence recourse is had to poisoning, for the purpose of making a short process with a husband, when, by ill management, the requisition of a divorce has been too long delayed. Thus all domestic confidence, and all nuptial friendship vanishes. Suspicions become universal on both sides ; and at every step he takes, the one party will have reason to fear lest, after their separation, the other should betray him, and employ the secrets which he knows, to injure him. This is the state in which *Tacitus* actually describes Rome to have been, after female virtue was no more. There, however, incest was not indeed to blame ; for against that crime Rome still maintained her ancient laws in all their severity ; but still, from her example, we cannot but see, what a life of trouble and terror men must lead, when vice among the fair sex, once becomes general and fashionable. And still more horrible would its consequences be in the present day, now that Europe has imported from America that dreadful disease, which is propagated by coition. In such circumstances, no one could be secure against its infection ; and among the Americans, it actually is almost universal. Happily, such a state of society cannot subsist for ever ; for by a constant decrease of marriages, the strength of a nation is impaired, and, like Rome, it at length becomes a prey to the nations around it.

I grant that the consequences of incestuous marriages are not in every climate, and situation of society, so formidable as we have now described them. In a cold country, for instance, or where a people live almost solitary in deserts, debauchery will not reach

the same height so rapidly as in a warm climate, and in great cities. Among the Americans, marriage between brothers and sisters is frequent ; but it may be presumed, that it is not there productive of all its baleful effects ; because the people both of the northern, and of the warmer regions of America, feel the impulse of love but in a very inconsiderable degree. And yet in this same America, where the male sex are so insensible to female charms, along with these marriages, we find whoredom among unmarried persons generally permitted without any restraint ; and the consequence is, that the venereal disease has become universally prevalent, and cannot but have contributed in *some* degree to that degeneracy of human nature, which has been remarked among the Americans.

If then the prevention of illicit intercourse and premature corruption in families, be the cause of the prohibition of incestuous marriages, it is easy to comprehend wherefore Moses should have declared them the abomination of the Canaanites ; although he relates in his history, that at the beginning of the world, God only created a single pair ; the consequence of which must have been, that *then* brothers and sisters were necessarily obliged to intermarry ; so that we are all sprung from marriages which in subsequent times were forbidden. (M. L. § 65.) For God did not thus by any dispensation of law, indulge the sons and daughters of Adam in what was in itself sinful ; nor did he compel mankind to any thing in its own nature vicious ; but the intermarriages of Adam's children were naturally, and without dispensation from God,

(of which we nowhere find the least hint,) legitimate and allowable. In the first age of the world, they were without any evil consequences ; and the first intercourse between the children of Adam, as they progressively grew up, beyond all doubt rendered their marriages permanent. Nor was there any risk of Cain or Abel deserting their sisters after cohabitation, as there were yet but few females on the face of the earth. Besides, it is not individual marriages between sisters and brothers that constitutes an abomination. It is only when a people, after they become a people, permit such marriages without any restriction whatever, that they incur the guilt of a sin, for which, according to the testimony of Moses, God may justly inflict a national punishment upon them. For an individual marriage of this kind cannot have those direful consequences which follow the universal permission of such connections ; and it would still be in the power of brothers and sisters to marry without any sin or harm, if they happened to be cast by shipwreck on an uninhabited island. (M. L. § 66.)

ART. CIX.

Wherefore Moses has prohibited some other Marriages besides those between Parents and Children, Brothers and Sisters ?

§ 9. I HAVE hitherto spoken only of marriages between parents and their children, or brothers and their sisters ; or with step-daughters, or daughters-in-law, or with step-mothers, and mothers-in-law. Moses,

however, prohibits marriage with several other relations, such as, with a brother's widow, with a father's or mother's sister, &c. &c. Now, how far *do these* marriages come under the influence of the preceding cause? (M. L. § 68.)

It will certainly be obvious to the reader, that even these relations, though somewhat more remote than the former, will have more opportunities to corrupt each other, if any hope of marriage remains to them, than total strangers can have. But here the necessity of prohibition is not so very great, and rather arises from a prudent caution on the lawgiver, which carries him a step beyond what is strictly necessary. We find no certain limits, sufficiently distinct and universal, pointed out by nature, as to how far the prohibitions of marriage, and the precautions of legislators, should extend. —The children of brothers and sisters, whose union Moses did not merely permit, but regarded as peculiarly desirable, have undoubtedly more intercourse, and opportunities of mutual corruption, than strangers; and the most ancient Roman laws did actually interdict them from marrying. (M. L. § 41.)*. What reason then had Moses for not prohibiting their marriage? Wherefore did his prohibitions extend just to the sister and sister-in-law of the parents, and no farther? What here determines the boundary where near relationships cease, and more remote ones commence? (M. L. § 65, 66.)

It is easy to conceive, that in such a case much depends on the peculiar circumstances and customs of

* See Plutarchi, *Pompeia*, Quest 6. and Tacit. *Annal.* xii, 6.

nations, according to which, the established intercourse of near or remote relations is more or less familiar. Among the Romans, the right of kissing, which was only permitted among the nearest relations, once formed the distinguishing boundary* ; and among the Hebrews, probably the veil, which the women of certain classes usually wore, (M. L. § 69, 70.) answered the same purpose. To their nearest relations, they might appear without a veil, but not to others ; and this liberty of appearing without a veil, by the ancient traditionary usage of the Arabs, converted by Mahomet into a written law, extends precisely as far as the Mosaic prohibitions of marriage. One passage of the Koran relative to it, occurs in Sura xxiv. 31. “ *Command the daughters of the faithful to shew their ornament* (that is, *their face*, or according to another explanation, *the costly dress under their veil*,) *except in*

* Plutarch, in the 6th Question of his *Ρωμαϊκα*, where he treats of the origin of this custom, says, “ Probably too, for this reason, the affection of relations extended as far as kissing, and that still continued the only token of consanguinity, because marriage with blood relations was not permitted. For in former times, men in general married their blood-relations as seldom as they now marry their aunts or sisters ; and it is only of late that marriage between brothers’ and sisters’ children became permitted, in consequence of the following circumstance : A person possessed of no estate, but who was a gentleman, and very much beloved by the people, fell under the suspicion of having married a woman who was his cousin-german, and her father’s sole heiress, by which means he lived in a good style. When he was accused of this, the people stopped the investigation of the case, and acquitted him ; and made a law, that marriages between cousins-german, and all blood-relations more remote, should be allowed ; but those between persons more nearly connected, prohibited.”

“ so far as is unavoidable, to no man, but their husbands,
 “ their fathers, their husbands’ fathers, their brothers,
 “ their brothers’ sons, their sisters’ sons, their chamber-
 “ maids, their slaves, or to beggars, or to children who
 “ have not yet known a woman.” In a second passage,
 Sura xxxiii. 55. the pretended angel, Gabriel, after
 prohibiting all from disturbing the wives of the Pro-
 phet, or seeing them unveiled, as some impertinent
 visitors had done, proceeds in these words: “ *Women*
 “ *commit no sin in appearing unveiled to their fathers’*
 “ *sons, brothers, brothers’ and sisters’ sons, chamber-*
 “ *women, and slaves.*”

It cannot possibly be suspected, that the liberty of
 seeing their relations without a veil, may be a conse-
 quence of the Arabian marriage-laws, instead of being
 (as I make it) of antecedent origin, and the line of
 distinction by which Moses may have been guided;
 for among the Arabs, the laws of marriage are stricter,
 and prohibitory of *more* marriages, than there are here
 women mentioned, whom men may see unveiled;
 (M. L. § 70.) whereas the cases in which the veil is
 dispensed with, precisely agree with the Mosaic pro-
 hibitions, when not extended by inferences beyond the
 express letter of his laws.

Such a distinction may no doubt be unsuitable to
 the circumstances of other nations, but, considering
 the manners of the Hebrews, it was very rational.

We do not instantly fall in love with every woman
 whom we see without a veil, else should we have too
 much to do, because we see them all unveiled, and
 are from infancy accustomed to the sight; but among
 the people to whom Moses gave laws, to see a woman

unveiled, was only the privilege of great intimacy, in consequence of near relationship ; and it could not fail to make a deeper impression on the mind, from the rarity of its occurrence ; and therefore the legislator very wisely guarded against the dangerous effects of such intimacy and such impression, by prohibiting marriage with all those women whom relationship entitled men to see unveiled.

Among the women, whose faces may, according to the Koran, and the customs of the Arabs, be seen unveiled, the brother's wife is not included ; and yet Moses prohibits the marriage of a brother's widow, unless in the case of his having died without children. Here, therefore, a different reason must have operated ; (M. L. § 71.) and we find it in the origin of the Levirate-law of the Hebrews, explained above in Art. XCVIII. The brother's widow had before been included in the inheritance, and the unmarried brother had a reversionary right to her. Such reversions are dangerous, and may give occasion to anticipations, and even to the expedient of poisoning. It was, therefore, highly considerate in a legislator who wished to promote chastity in families, to abolish that reversionary right altogether ; and likewise, because the ancient consuetudinary usages of a people often subsist, although no longer supported by the law, to render a marriage between the parties impossible, and thus cut off those expectations that might seduce them into guilt. Thus acted Moses, to the extent that necessity required. He allowed the Levirate-right to continue in force in the case of the husband dying childless ; but in all other cases he expressly prohibited the

marriage of a brother's widow. With this cause of the prohibition, the meaning of the term *Nidda*, (that is, *rival-marriage*,) which is peculiarly applied to such a marriage, (see Art. CII.) exactly accords. The legislator either dreaded that the unmarried brother might become the rival of the married one; or else he thought fit to distinguish such a connection by the odious term expressive of polyandry; which indeed, in its origin, is so nearly akin to it, that among the Mongols we find this right of the surviving brother actually degenerated into a perfect polyandry.

I look upon the prohibition of marrying the paternal uncle's widow, as included in the preceding one, (M. L. §. 103.) and account for it on the same principle; for if no brother of the deceased husband was alive, the widow, as a part of the inheritance, naturally fell to his nephew. There are two other circumstances which establish this, as the design of the prohibition in question;

(1.) That Moses appoints the same punishments for transgressing it, as for marrying a brother's widow, namely, that the children of such a marriage were not to be enrolled in the registers, as the children of their natural father, but in point of civil rights, to be considered as belonging to the widow's deceased husband;

(2.) That Moses no where prohibits the marriage of a maternal uncle's widow.

In short, Moses would seem to have laid down this principle to himself: "The first and second expectant, according to the present Levirate-law, shall not be permitted to marry the widow, excepting in the single case, when it is absolutely necessary, name-

“ly, when the prior marriage has been unfruitful.” When this case did not occur, he looked upon it as the safest plan, at once to cut off such questionable expectants from all hope of the possibility of forming such a connection, and thereby obtaining the inheritance.

ART. CX.

The Consuetudinary Law of the Israelites, on this subject, before the time of Moses. His two Statutes.

§ 10. BEFORE I proceed to closer investigation of the particular statutes of Moses, relative to marriage, I must say something of the consuetudinary law established before his time, (M. L. chap. iv.)

Moses gave laws to a people, among whom all marriages with near relations were not previously held lawful. (M. L. §. 33.) He describes the marriages which he prohibits, as customary among the Canaanites and Egyptians, Levit. xviii. 3.—25.; and consequently as foreign usages, quite repugnant to the customs of his people. He relates, that when Abraham and Isaac wished to make it not be thought that Sarah and Rebecca were their wives, they gave them out for their sisters; Gen. xii. 12.—14.;—xx. 2.;—xxvi. 7.; and that when Abimelech expostulated with Abraham on that falsehood, he replied, *she is truly my sister, the daughter of my father, but not of my mother, and she has become my wife*, Gen. xx. 12. Abraham therefore, would not have married her if she had been his uterine sister. In like manner, we see from Gen.

xix. 31, 32., that commerce with a daughter was quite contrary to the custom of the whole country, and not so much as usual among the Canaanites, not even in Sodom.

Custom, however, did authorize many marriages, which Moses now prohibited. He had himself, perhaps, been the fruit of a marriage with a father's sister, although that is not certain. (M. L. §. 36.) But it is very certain from Gen. xx. 12., that Abraham had married his own half-sister, and looked upon it as lawful, because she was not by the same mother. (M. L. §. 35.) Marriage, therefore, with a half-sister, was permitted, but that with an uterine sister held unlawful, just as among the Assyrians, among the Persians before the reign of Cambyzes, and among the Athenians, (M. L. §. 37.) That the brother received the brother's widow, along with his inheritance, I have mentioned in Art. XCVIII. as very probable: and other marriages more remote than with a half-sister, can hardly be thought to have been then looked upon as unlawful.

Under these circumstances, Moses gave his laws; and for the better security of families against the dangers of early corruption, he prohibited several connections that were previously permitted. There are two statutes upon this subject, which we find him giving, the one but a very little after the other. The first, in Levit. xviii. contains only prohibitions; the second, in Levit. xx. differs from the preceding, in this, (M. L. §. 74.) that it specifies the punishments that are to be inflicted on the several sorts of incestuous marriages, viz. burning, extirpation from among the people,

and (which was the mildest of the three) registering the children of such marriages, not by the name of the true father, but by that of the widow's deceased husband, (M. L. §. 76.) Of these punishments, I shall treat fully under the head of Penal law, and here only premise, (1.) that we are not to understand burning to have meant the consumption of the living body by fire, because the criminal was first stoned to death, and then the corpse burnt; and (2.) that it may be questioned whether extirpation from among the people was in every case a capital punishment, and did not sometimes mean only banishment.

ART. CXI.

Moses declares the Prohibited Marriages, Abominations and Sins, for which God punished even other nations, and therefore morally wrong.

§ 11. To us christians the Mosaic marriage-laws are highly important. They still retain in our political constitutions a validity, which his other laws no longer have; the reason of which is, that he, as a prophet and infallible teacher of morality, declares them a part of the moral law, and that incestuous marriages were, even before the giving of his laws, an abomination justly punishable, and therefore morally evil. (M. L. §. 24.—26.)

He concludes his prohibition of such marriages, in the following terms.—“ Ye shall not defile yourselves
“ with any of these: for with all these have the na-
“ tions defiled themselves, that I will thrust out be-
“ fore you. The land became unclean, and I am a

“ venging its sin upon it, and it is spewing out its inhabitants. Wherefore keep ye my statutes and laws, and do none of all these abominations, neither the native, nor the stranger that enjoys protection among you, that the land may not spew you out, if ye defile it, as it spewed out the people that was before you : for all these abominations have the inhabitants of the land committed, who were before you, and thus it became unclean.” I do not here draw my principal proof from the word תועבה, (*Thöeba*), *abomination*, because it may be objected that Moses applies it in other passages, to things, such, for instance, as *unclean* meats, (Deut. xiv. 3.) of which the use, indeed, is not contrary to the moral law, and sinful, but which, nevertheless, he would have the Israelites to regard as loathsome and disgusting. This term, in fact, among the Hebrews, sounds somewhat softer than with us, being, strictly speaking, only synonymous with *impure*, or *nauseous*. I might indeed, with good reason remark, that there is a great difference between calling meats, and calling actions *unclean*, and that the action which is declared to be unclean and loathsome, must, in a moral sense, be of course sinful. I will not however, dispute about this word, but found upon what Moses repeatedly affirms, namely, that the people who inhabited Palestine before the Israelites, that is, the Canaanites, whom his civil law did not at all concern, yea, who had lived before any of his laws were given, and consequently, could know nothing of them, had by all their abominations so polluted themselves, and their land, that God was

punishing them on this account, and that the land was spewing them out.

To this it has been objected, that the above conclusion does not perhaps apply to all the marriage-laws that are previously described, from v. 6. to v. 18.: but ought merely to be referred to what immediately precedes it, on the subjects of adultery, human sacrifices, sodomy, and bestiality, v. 20.—23.; that Moses here connects together laws of quite different kinds, civil and natural, and that it is only the transgressions of the latter, that he reckons the abominations which brought down the vengeance of heaven on the Canaanites. But the whole arrangement of the xviii. chapter opposes this distinction. It is not a distinct chapter, merely in consequence of our modern division, which is often altogether arbitrary; but according to Moses himself, it forms a connected section, or *an edict*, as I might properly enough term it, by itself. It begins with the usual introductory clause of a new edict, not connected with the preceding one, *Jehovah spoke unto Moses and said, speak unto the Israelites, and say unto them.* Then the words of God proceed in one connected discourse unto the end of the chapter. After which, the xix. chapter commences with a repetition of the same preamble, “*Jehovah spake, &c.*” Now the edict contained in this xviii. chapter, naturally divides itself into three parts; (1.) The five first verses contain a general introduction, which declares that, *as the Israelites worshipped quite a different God from the Egyptians and Canaanites, they were not to imitate those customs of these nations, which were con-*

ned with their superstition and idolatry. And of this description were not only their sacrifices of children to Moloch, their sodomy, and bestiality, but their incest also. For the theology of the Egyptians related incestuous stories of their deities ; as, for instance, that *Osyris* took his own sister *Isis* to wife ; and again, that with her other sister *Nephthys*, who was married to his, and her own brother *Typhon*, he had once committed adultery, and been betrayed by a garland of flowers which he left lying on the ground. These fables, it is no doubt true, had quite an innocent meaning, for *Osyris* was the Nile ; *Isis*, that part of Egypt, which lay so low, as to be overflowed by the Nile : and *Nephthys*, the high lying barren sandy deserts, which were, however, occasionally overflowed also, when the Nile rose above its usual height, and then produced flowers. But this mythology had, at the same time, as *Diodorus Siculus* relates, (b. i. ch. 27. p. 31. of Wesseling's edition,) the effect of leading the Egyptians, after the example of *Isis*, and contrary to the custom of other nations, to permit marriage with a sister, by an express law.

(2.) After this general introduction, follow (v. 6.—23.) statutes, which prohibit the Israelites from things, which among the Egyptians and Canaanites were lawful, or at any rate, in fashion, and were founded on their theology and superstition.

(3.) And then comes an appendix, in which Moses admonishes the Israelites to keep these laws sacred, because the Canaanites were, for the opposite conduct, to be punished by God, and driven out of their land. Is it then possible to limit the operation of this appen-

dix, to a small part of the prohibitions contained in the edict; particularly, when it so manifestly refers to the introduction, which not only relates to those statutes in general, but also, more immediately to that made against incest?

Still more decisive are verses 22, 23, 24, of chap. xx., in which, immediately after the statutes detailed from v. 11. to v. 21., we find the following words, “ Observe all my statutes and laws, and keep them, “ that the land into which I am leading you, as a “ dwelling place, may not spew you out; and live not “ after the customs of the people whom I am driving “ out before you: for all this have they done, and “ disgusted me at them; and therefore, I have promised unto you, that ye shall possess their land, “ &c. &c. (M. L. §. 26.)

ART. CXII.

Whether Moses is to be understood as declaring all the Marriages that he forbids, or only those of the very nearest relations, to be morally evil, and to constitute the Abomination of the Egyptians and Canaanites?

§ 12. BUT does Moses include all the marriages which he prohibits, among *abominations*, and what were so, even before the giving of his law, and brought down divine vengeance on the Canaanites? or are we to understand the term, of the very closest marriages only? In other words, do all the Mosaic marriage-laws concern us christians, or those only relating to the marriage of the nearest connections? Or, to put the question in the light in which it commonly ap-

pears to most people—are *all* the marriages forbidden by Moses incapable of dispensation, or does the magistrate enjoy the power of dispensing with *some* of them, because they form no part of those universal laws of God, which concern the whole human race? (M. L. §. 31, 32.)

The marriages prohibited by Moses naturally divide themselves into two classes, of which,

1. The first comprehends those of the closest possible affinity, such as, between *parents* and *children*, *brothers* and *sisters*; and those of *step-parents*, or *parents-in-law*, with *their respective children*. Here the danger of corruption is so great, that among every people that has any concern for the preservation of good morals, they must be prohibited, and in no case whatever admit of dispensation. This point will not be contested. If Moses denominates any marriages *abominations*, it must be these.

2. The second class includes those between relations who are not quite so near, and do not usually reside constantly in one house, nor have such unlimited intercourse, but whom we cannot determine precisely in the same manner among every people; because, in some instances, a certain degree of relationship gives a privilege of the fullest intercourse in one country, but does not so in another. Thus, in countries where no regard is paid to distinction of rank in marriages, and where the nurse continues all her life in the house in which she has suckled a child, it may be expedient, for the avoidance of early corruption, to prohibit marriage with a foster-sister, as is the case among the Arabs; but with us, on the contrary, such a prohibi-

tion would be quite superfluous, as we do not continue to live in the same house with the children of our nurses, or to have any familiar intercourse with them; and the difference of condition makes a marriage with a foster-sister so improbable, that she can scarcely be seduced, under the expectation of it.

Now, between these two classes, Moses actually makes a marked distinction; for on marriages of the former, he inflicts capital punishments: on those of the latter, only civil penalties; tolerating withal, their continuance, if once consummated. At least, he nowhere enjoins a separation of the parties; and their punishment is either expressed in the words, *they shall bear their blame*, or consists in this, that the children issuing from such marriages, are ascribed, not to the natural father, but to his deceased brother, or paternal uncle, with whom the woman had been married before; which, by the way, makes the continuance of the marriage manifest.

It is my opinion that marriages of the first class only, and not those of the second, are reckoned by Moses among those abominations which God disapproved, and punished in the Canaanites. For,

(1.) Philosophical morality discovers no necessary and cogent reason wherefore all nations should be obliged to prohibit relations of the second class from marrying. It furnishes no distinct token whereby the Canaanites, that lived before the Mosaic law was given, could have concluded that such marriages were sinful; and without such a token, certainly that people could not be punishable for permitting practices, the sinfulness of which, reason did not enable them to

infer. Should it be here said, they ought, on the principle of precaution, to have prohibited them, it might, with equal reason, be added, that they were bound to carry that principle still farther, and to have prohibited the marriage of cousins-german; and if they were not so, their obligation to exercise the precaution in question cannot be proved.

(2.) We can hardly suppose but that Moses, in devising his marriage-laws, would have exercised that prudent foresight which I formerly mentioned, and have given some injunctions as to this point, suitable to the circumstances of the Israelites, though not universally necessary. If this *is* the case, these marriage prohibitions of the second class may be considered as outworks of civil law, drawn by the legislator around the necessary laws of nature; not as laws of nature themselves, or obligatory on the Canaanites or other nations.

(3.) To this we must add, that these prohibitions of marriage among more distant relations, are, in part, founded on the peculiar manners of the Israelites; on the right, for example, of seeing such and such kinswomen unveiled, and on the Levirate law. Now, such ordinances could not apply to nations whose manners differ from those of the Israelites, and, at any rate, to the people who lived prior to the Mosaic law.

(4.) Some marriages of the second class, even that with a step-sister had been permitted, and been usual, long before the time of Moses, among the ancestors of the Israelites, as far back, indeed, as the time of Abraham, and before he had had the least intercourse with the Canaanites. Now, how could these marriages be

called the customs of the Canaanites and Egyptians? They were the very customs of Abraham and his descendants! But whoever reads the xviii. chapter of Leviticus from beginning to end, will, by comparing the introduction and conclusion, soon perceive, that what are in the conclusion termed *the abominations of the Canaanites*, for which God was punishing them, and the land spewing them out, are the very same things which in the introduction had been termed, *the customs of the Canaanites*. And hence I cannot understand the harsh expression of Moses, of any thing else than the peculiar customs of that people, in other words, than those marriages of the very nearest relations, by which they were distinguished from the forefathers of the Israelites.

(5.) And how was it possible that of a marriage, which among the Israelites was not secretly and seldom, but publicly and frequently, gone about, as perfectly legal; and which, therefore, the whole people, even from the days of their pious ancestor, Abraham, might be said to have abetted,—that of any such marriage, Moses should affirm, that to punish it, the Canaanites were to be driven out of their country? What sort of a judicial sentence would it have been on the part of God, to command the expulsion of one people from their land, and the settlement of another in their room, because the former had been guilty of a sin in doing what among the latter had been held lawful, and was daily practised? To illustrate this by an example: *How could God ever have deprived the Canaanites of their land, and given it to the Israelites, on account of their allowing a man to marry the sister of*

his father; a marriage with a relation by no means so near as was that of Abraham with his own half-sister? For my own part, I cannot conceive this.

I know very well that, from the other sins enumerated in this xviii. chapter of Leviticus, adultery, idolatry, sodomy, and bestiality, the Israelites had been, perhaps, just as far from being perfectly pure, as other nations; but then these sins were committed in secret, and were not approved by the people.—They were the sins of individuals, and not of the people as a people. They did not, therefore, require to be punished upon the nation; and God might, with the most perfect justice, on account of the like sins, punish, by the hand of the Israelites, another people, by whom they were openly committed, approved, protected, and made even a part of religion. The same thing, however, does not hold with regard to marriages of the second class, for they were not privately concluded by individual Israelites, but were conformable to national custom.

But if Moses *did* reckon marriages of the second class among the abominations for which God punished the Canaanites, still his prohibitions of such remote connections do not affect us. Our laws may no doubt merit commendation, in prohibiting them for the better security of chastity; but then they are only human laws, and the sovereign has the power of dispensing with them. This doctrine is, no doubt, somewhat uncommon; but that no one may think it till now unheard-of, I must remark, that *Baumgarten*, a theologian, to whom Germany, at least for the last 50 or 60 years, has produced no equal, did, in his *Theological*

Doubts, regard these marriages as forbidden only to the Jews, and as admitting dispensations among us. I must farther remark, that it is the common doctrine of the Jews, that marriage with a half-sister by the father's side, which was Abraham's case, is forbidden to them, but not to the sons of Noah. In the application of my doctrine, however, the greatest caution is certainly necessary to prevent marriages of the first class from being reckoned in the second. To the first class, in my judgment, belong (and they admit of no dispensation),

1. Marriage between parents and children, or with a step-mother, or mother-in-law, or with a step-daughter, or daughter-in-law, or between uterine brothers and sisters.

2. Of an intermediate nature between those of the two classes, is the marriage with a half-sister, in which Abraham lived. Among a people who practise polygamy, and where the children of different mothers have not such familiar intercourse with one another, as among us, such a marriage might be permitted ; but in our quarter of the world, it is as perfectly impermissible and incapable of dispensation, as that of a brother and sister full blood ; because with us, step-brothers and sisters have just as free intercourse, and as much opportunity of mutual corruption, as uterine.

- (3.) But, on the other hand, I conceive that marriage with a *father's* or *mother's* sister, with a *brother's* widow, and a *paternal uncle's* widow, was forbidden by Moses only to the Israelites, and admits of dispensation among us ; just as at that time, God himself, to gratify the Israelites in the maintenance of a point of

honour, dispensed with the prohibition of marriage with a brother's widow, and even enjoined Levirate-marriages on civil grounds, when a brother died without issue. And this example, by the way, clearly shews, that upon considerations of equal weight, dispensations in such cases would not displease God, if these prohibitions of the second class did affect us. (M. L. § 119,—126.) But this doctrine is seldom admitted by those who have the right of granting dispensations, and belongs to the number of those opinions that are peculiar to myself and some few others. I have very seldom found on enquiry, that sovereigns were disposed to grant dispensations in cases where Moses expressly mentioned the marriage in question as prohibited, although the opinion of those consulted turned out in favour of a dispensation.

ART. CXIII.

Of Prohibited Marriages of the first Class : 1. those between Parents and Children, and between Step-parents, or Parents-in-law, and Step-children, or Children-in-law.

§ 13. I now proceed to the consideration of the particular marriages prohibited by Moses.

The marriage of a father with his own daughter, (M. L. § 95, 96.) Moses represents in his history as repugnant to the custom of the whole country ; and we find it considered in the same light by the daughters of Lot, educated even as they had been in Sodom, Gen. xix. 31,—35. But it is remarkable, that in nei-

ther of his two marriage statutes does he take any notice of this marriage. Some, indeed, have wished to explain Lev. xviii. 7. in reference to it, *Thou shalt not uncover the nakedness of thy father and thy mother ; it is thy mother, thou shalt not uncover her nakedness ;* but this, neither the Hebrew original, nor the style of the other marriage-prohibitions, will permit. For Moses addresses them all to the man, and never to the woman. The verb תגלה, *tu reteges*, is in the masculine gender, and, if we would express this circumstance, the prohibition must be translated, *Thou, O man, shalt not uncover thy father's nakedness, &c.* This is no prohibition to the daughter not to marry the father, but only to the son not to uncover his mother's nakedness, which is regarded as the nakedness of his father himself ; that is, neither to marry his mother, nor to have carnal knowledge of her without marriage. The verse might be more clearly rendered, *The nakedness of thy father, that is, of thy mother, thou shalt not uncover ;* and Moses, who certainly takes it for granted, that a marriage between a father and his daughter would be universally acknowledged to be an abominable transaction, represents marriage with a mother, in order to paint it in still more horrible colours, as nothing less than incest with a father himself.

The reason why Moses has omitted the prohibition of this crime, is probably the very same for which Solon imposed no punishment on parricide*, namely,

* Cicero pro S. Roscio Amerino, c. 25. " Prudentissima civitas Atheniensium dum ea rerum potita est, fuisse traditur. Ejus porro

because none of his people had ever dared to commit it; and it was deemed so horrible an act, that it did not seem necessary to forbid it. In addition to this, it is particularly to be observed, that from the introduction of the edict, Moses evidently meant to prohibit incest, which was common among the Egyptians and Canaanites; and since the connection of a father with his daughter was (according to Gen. xix. 31, 32.) among the Canaanites, and even in Sodom, the most profligate city in the whole country, repugnant to the custom of the land, it was not necessary to prohibit a connection thus universally execrated, and of which, perhaps, there had been no example. For it is to be remarked, that Lot's daughters committed only whoredom with their father; and that there was no permanent marriage with him.

In fact, however, Moses does prohibit it, though but *en passant*, as it were, and on another occasion; when in the 17. verse of this same chapter, he says, *the nakedness of a woman and her daughter, thou shalt not uncover*;—and in ch. xx. 14, *if a man take a daughter to wife, along with her mother, this were to marry her whom he is bound to protect. Both he and they shall be burnt. Let there be no such marriage among you.* For if a man may not marry the daughter of a woman with

VOL. II.

G

“ civitatis sapientissimum Solonem dicunt fuisse, eum qui leges, qui-
 “ bus hodie quoque utuntur, scripserit. Is cum interrogaretur, cur
 “ nullum supplicium constituisset in eum qui parentem necasset,
 “ respondit, si id neminem facturum putasse. Sapienter fecisse dici-
 “ tur, cum de eo nihil sanxerit, quod antea commissum non erat, ne
 “ non tam prohibere quam admonere videretur.”

whom he hath cohabited, certainly he can never marry his own daughter : for our daughters must always be the daughters of a woman with whom we have cohabited, either in marriage or out of it.

I should not have thought it necessary to take any notice of the omission of this prohibition, did not those, who deduce *consequences* from the other marriage-laws of Moses, and think fit to prohibit more marriages than he has done, appeal to this omission : which, in fact, is, after all, no real omission ; *first*, because the marriage in question never had been customary among the Canaanites : and *secondly*, because it is forbidden by Moses, though in different terms.

Marriage with an uterine mother is prohibited by Moses, Levit. xviii. 7., in the words already explained. “ *The nakedness of thy father, that is, of thy mother, thou shalt not uncover ; she is thy mother ; her nakedness thou shalt not uncover.*” In the xx. chapter, where different punishments are annexed to the different sorts of incest, this marriage is not mentioned ; probably because no example of it had ever occurred, and Moses thought, like Solon, that no man would attempt such a horrible enormity ; or at any rate, that no legislator should suppose it even probable ; but rather, if at any time such a monster of iniquity should appear, leave his punishment to the determination of those, who might possess the right of adjudging him to suffer punishment.

Marriage with a step-mother, Moses prohibits in v. 8. of ch. xviii. ; *the nakedness of thy father’s-wife thou shalt not uncover ; it is thy father’s own nakedness ;* and to this crime, he annexes a capital punishment in

chap. xx. 11. This is one of the incestuous acts which he includes among the curses to be pronounced by the whole people, Deut. xxvii. 20. *Cursed be he that lieth with his father's wife, and uncovereth his father's bed ; and all the people shall say, Amen.* Moses, in his history of the Patriarchs, had thought it necessary to relate an example of this species of impurity, when Reuben dishonoured his father's concubine ; and he also relates, that his father, on that account, deprived him of the right of primogeniture, and in a manner cursed him, when he gave his blessing to his other sons on his death-bed, Gen. xxxv. 22.—xlix. 3, 4. Notwithstanding all this, to the Israelites, a marriage of this kind could not have appeared so perfectly abominable as it would appear to us : for we find that Absalom, and that by the advice of a very shrewd counsellor, lay with his father's concubines, in order to evince himself the successor to the throne, and at the same time, to give his fellow conspirators a certain proof that his father never could be reconciled with him, nor they be in any danger of being sacrificed to such a reconciliation, (see Art. LIV.) Among us, no rebellious son would act thus, unless he wanted to make himself an object of abhorrence to the whole nation. This, moreover, is the marriage, which in the New Testament, (1 Cor. v. 1.—5.) is expressly condemned as a species of impurity, abominable even among Heathens. How it might have been concluded in a Roman city, under the colour of the Jewish customs, I have shewn in my *Introduction to the New Testament*, §. 137., No. 5. (Dr. Marsh's Translation, vol. iv. p. 51.) The Jews held the abominable doc-

trine, that baptism so completely annulled all prior relationship, that a baptised person, (for they admitted Proselytes into their church by baptism) might marry his nearest relations, as they thus ceased to be connected with him.

Marriage with a grand-daughter is expressly forbidden in v. 10. of Levit. xviii. *The nakedness of thy son's, or thy daughter's daughter, thou shalt not uncover; it is thine own nakedness:* that is, it is as bad as if thou wert to be guilty of personal manustupration. This marriage, which Moses thus deems worthy of a positive prohibition, cannot, nevertheless, have appeared to him quite so abominable, as that with one's own daughter, which, as being too shocking, he does not so much as think necessary to forbid. In fact, there is this great difference between them, that the father is the natural guardian of his daughter's chastity, but not so the grandfather of the grand-daughter's; and in general, the grandfather has not so much opportunity—I may even add, temptation, to corrupt his grand-daughter, as a father, his daughter, (a Cicerò, his *plus quam par erat obsequiosa* Tulliola) because she lives under his immediate superintendance.

In the xx. chapter, where he specifies the punishments of incestuous commerce, Moses omits this marriage also: probably for the reason already twice adduced, but now no longer applicable, that no instance of such an enormity had occurred, or was easily presumable; and consequently the punishment of the monster who should perpetrate it, was left to the decision of that generation that might unfortunately witness it.

Marriage with a mother-in-law, a step-daughter, or step-grand-daughter, is comprehended in one common prohibition, Levit. xviii. 17. ; *Thou shalt not uncover the nakedness of a woman and her daughter, nor shalt thou take her son's daughter, nor her daughter's daughter, to uncover their nakedness. This were (Zimma) to marry those whom thou art bound to protect. The same prohibition occurs again in the xx. chapter, where the punishment of death is annexed to the transgression of it ; If a man take a (daughter to) wife, along with her mother, it is marrying a woman under his protection. (Zimma.) All three shall be burnt. Zimma shall not be suffered among you. Only the step-grand-daughter is overlooked in this penal statute, probably because the case is rare, and the punishment is obvious from the law prohibitory of marriage with a step-daughter. Among the curses which the Israelites were obliged to pronounce against transgressors of the law, we find this, (Deut. xxvii. 23.) *Cursed be he that lieth with his mother-in-law, and all the people shall say, Amen.**

I have often found that people in some parts of Germany, conceive marriage with a step-daughter lawful, and that a mother will marry a young man, on condition of his taking her daughter, to whom she means to bequeath her all, after her death. Now, had Moses nowhere so much as mentioned this marriage, still it would be obvious, that, on account of its fearful consequences, it ought to be prohibited, and declared incapable of dispensation : for if there were any possibility of obtaining permission to effect it, neither the life of the aged wife, who happened to have had

a handsome daughter by her first husband, nor yet the chastity of that daughter could be secure ; and the mother's settlement, which gives the daughter the reversion of her marriage-bed, serves only to make the matter worse and more dangerous. But Moses prohibits this marriage in such terms, that it can hardly be considered as belonging to any other than the first class : which I hold to be incapable of dispensation. For,

1. In the first place, he inflicts upon it the punishment of death ; and,

2. In the second place, he prohibits it in the very same statute, which prohibits a marriage which the Israelites were expressly obliged to curse, namely, that with a mother-in-law. Whoever, therefore, should be inclined to consider marriage with a step-mother as capable of dispensation, would also have to maintain, on the other hand, that marriage with a mother-in-law should be permitted.

For this reason, I have never been able to prevail upon myself to lend my approbation to marriages of this description ; and I am astonished, considering their terrible consequences, that they should be so frequently projected, or possibly considered as lawful, or that princes should be importuned about them. The individual case, in which a dispensation may be solicited, may be harmless, but the consequences of the allowance are tremendous : for it invites to the use of poison, in the hope of similar dispensations.

Finally, by Levit. xviii. 15., marriage with a daughter-in-law is prohibited, and in ch. xx. 12., punished with death.

ART. CXIV.

Of the Prohibition of Marriage between Brothers and Sisters.

§ 14. THIS prohibition we find in Levit. xviii. 9., expressed in the following words:—*The nakedness of thy sister, whether she be the daughter of thy father or of thy mother, whether born* in the family or out of it, thou shalt not uncover.* Here it is evident that the prohibition not only affects the full sister, but extends to the step-sister, whether by the same father or mother; (*germana* and *uterina*.) and that there may be no doubt or mistake, it is added, *whether born in the family or out of it.* I think this addition does not apply to an uterine sister; who, if she is a half-sister, must of course be born out of the family, (so that it was not

G 4

* מולדת; (*Muledeth*,) a word, of which we shall hear more in the next Article, and to which, with almost all the expositors, I give a passive signification, *nata*. I must not, however conceal, that such a signification is repugnant to the Jewish vowel points; and if these are admitted to be infallible, Samuel Bohl, (in his *Tractatus contra Matrimonium comprivignorum*) is right in translating it actively, *parientis*; that is, the daughter of thy mother, whether *she bore her* in or out of the family. For, according to the points, the letters are to be pronounced *Moledeth*, and form an active participle: unless, indeed, they make a substantive noun, as an opponent of Bohl's opinion might be hardy enough to maintain. I must, however, inform the reader of Bohl's writings on this subject, that the vowel-points are a modern addition to the Hebrew language, and that by disregarding them, we may pronounce the letters *Muledeth*, and then the word becomes passive, and means *born*. But of this more, in the next Article.

necessary to say so, or to make any distinction;) but only to the sister, by the father's side, (*germana.*) The father might have a concubine out of his house, whose children would also be brought up out of his family, and of course, have little intercourse with those of his lawful wife. This was particularly the case, where a people lived in tents: for then he would have a particular tent for every wife and her children, if he could afford it. Moses, however, for the sake of still greater security, thinks it better to prohibit all marriage between brothers and sisters.

His law, as every one must see, is stricter than the established usage already mentioned, as prevalent before his time; for Abraham lived in marriage with his half-sister, because she was not his uterine sister. In a land of polygamy, *that* might perhaps be allowed without much danger of certain and great evil, because there would be but little intercourse between the children of a husband's different wives, living separate from each other, and not likely to meet on very friendly terms. But manners alter and improve; politeness, or an itch for company, keeps jealousy more out of sight, and makes wives, while rivals and enemies at heart, live on terms of apparent intimacy, and the intercourse between their children then becomes more familiar. If, however, the people be poor, as was the case with the Israelites, the husband will not be able to keep up a particular establishment for each of his wives: and all who belong to one family must live together. Moses, therefore, for security, goes a step beyond the consuetudinary usage of the Israelites; and is so earnest in the enforcement of his new injunction,

that in verse 17. of this chapter, he sanctions it with the punishment of extirpation, and in the book of Deut., chap. xxvii. 22., with a curse, to be solemnly pronounced by all the people on those who transgress it. It is probable that the permission of marriage with a step-sister had been found to be attended with very pernicious consequences.

We have, besides this, yet another prohibition relative to marriage with a sister, although it is not very clear wherein it differs from the preceding, or what could have led Moses to repeat the same prohibition twice in one chapter. This circumstance has given rise to many disputes, of which I shall speak hereafter : but at present, I shall proceed as if I knew nothing of them, and state how the matter has always appeared to me, when I surveyed it with my own eyes.

The prohibition stands in Levit. xviii. 11., only one verse before the former, and is, as I think, and as all the ancient translators have understood it before me, to be translated as follows ; *The nakedness of the daughter of thy father's wife, and whom thy father hath begotten, (she is thy sister) thou shalt not uncover ;* or in terms somewhat more intelligible to our ears, *The nakedness of thy step-mother's daughter, begotten by thy father, and consequently thy sister, thou shalt not uncover.* Here something would seem to be forbidden, that had previously been forbidden in verse 9., namely, the marriage of a step-sister by the same father. (The lxx. expressly render, ὁμοπατρία.) The strangest circumstance is, that this prohibition does not immediately follow the former : for in v. 10. a prohibition relative to marriage with a grand-daughter intervenes.

I cannot deny that it has long been very difficult for me to comprehend this strange phænomenon; and I can scarcely forbear doubting whether we now have the correct reading of the Hebrew text. Can the whole verse be spurious, and but a scholium admitted from the margin into the text, and probably intended to illustrate the doctrine of verse 9.? Or are the words מולדת אבך, (*Muledeth Abicha*,) *begotten of thy father*, an interpolation; and should not the verse, when they are expunged, run thus: *the nakedness of thy step-mother's daughter, (for she too is thy sister,) thou shalt not uncover?* In this case, the prohibition would relate to the marriage of step-children, that is, of a husband's son with a wife's daughter, or *vice versa*; and that I would reckon not among the abominations for which God punished the Canaanites, but among those of the second class, the prohibitions of which, in my opinion, do not bind us Christians, although, at the same time, I can very easily conceive, why Moses should have taken the precaution of prohibiting them among the Israelites. Unfortunately, however, for both these conjectures, no manuscript, nor ancient version that I know, gives them any support: for, to my astonishment, they all agree with the printed text.*

* The versions which do so, are the lxx., the Vulgate, the Syriac, the three Chaldee versions, the two Arabic, and the Samaritan. One Greek version, however, not very well known, viz the αλλος of the Hexapla, has ὁμομηρία, *of one mother*. This is probably a mistake of transcription; but, if instead of its being so, we will have it to be a correct version of the *true* original, and the source of a various reading, the proper word in the Hebrew text should be not אבך, but אמך. The translation of the verse would then be, *The nakedness of thy step-mother's daughter, who is thine own mother's daughter, (that*

But what I would say in explanation of the text, on the supposition of its being correct, is, that this 11. verse is an illustration of the 9., and that Moses found it necessary to describe the marriage in which Abraham lived, in different words, and to prohibit it a second time, lest, by reference to Abraham's example, his first statute should have been falsely explained. But then, why did he not place his explanation immediately after the 9. verse, instead of inserting a different prohibition between them? This, I cannot conceal, still remains to me a matter of obscurity.

ART. CXV.

Whether, in Levit. xviii. 11., the Marriage of Stepsons with Step-daughters be Prohibited?

§ 15. I MUST now take some farther notice of the controversy relative to this verse, to which *Samuel Bohl**

is, whom thou oughtest to regard as such) *and thy sister, thou shalt not uncover*. On this ground, in the dispute which will be stirred in the next Article, Bohl would be in the right, in a way which he himself never thought of: and the marriage of step-children must be considered as prohibited. This however, merits further enquiry.

* This is the man, whose *Dissertationes pro formali significatione erudenda*, I have controverted in §. 8. of my (*Beurtheilung der mittel, &c.*) *Examination of the means of understanding Hebrew*; a man who had too little knowledge of the other Oriental languages, and was inclined to determine the significations of Hebrew words, solely from the connection in which he found them in the Bible. The principal work which he published concerning the subject of our present controversy, is a Collection of Disputations, published at Rostoch in 1637, under the title, *Tractatus contra Matrimonium Conprivignorum*, which was followed by other Treatises in vindication of its doctrine.

gave rise, by explaining it, of the marriage of step-sons with step-daughters.

It had always been before translated, and understood, as I have translated it in the foregoing Article, agreeably to the concurrent authority of all the ancient versions. But *Bohl*, a man of learning for the age in which he lived, who ventured to think for himself, and would perhaps have made a great figure, had he lived in better times, or at any rate, not died so early as the age of 28, was of opinion, that the common interpretation was clearly repugnant to the principles of Hebrew grammar ; for that מולדת, (*Moledeth*) was the active participle, (of the Conjugation Hiphil,) and ought therefore, to be translated *parientis*, or *quæ peperit*, and construed not with the word *daughter*, but with *step-mother* ; so that the meaning of the verse is this, *the nakedness of the daughter of thy step-mother, who hath born children to thy father, thou shalt not uncover. She is thy sister* ; that is, regarded by the law as such. In this way, the passage prohibits the marriage of step-sons with step-daughters : not however, absolutely and universally, but with the following distinction ;

1. If my step-mother had had no children by her marriage with my father, I was at liberty to marry her daughter by a former marriage.

2. But, on the other hand, if she had had children to him, I durst not.

Now such a distinction would really not have been unsuitable to the scope of the prohibition ; for the intercourse between children of preceding marriages will certainly become more frequent and closer, if the

wife have children by the second husband also. By their mediation, the former children of the two parents, become, as it were, brothers and sisters, because they are on both sides half-brothers and sisters to those of the second marriage. *Bohl*, who only calculated degrees of affinity, and could say a great deal about *Scheer-basar*, and the fictitious *Scheer-besar-basar*, has not, as far as I recollect, made this remark ; which, however, ought to be made, if we would do justice to his explanation, while we examine it.

Bohl observed, that the explanation, though not the common one, and what had been adopted in the Consistories, was nevertheless not altogether new ; in proof of which, he appealed to *Raschi*, to *Menochius* the Jesuit, and to *Daniel Cramer*, assessor of the consistory of Stettin. He did, not, however, wish to have the merits of his doctrine judged by the authority of expositors, or decided on by the majority of voices ; on the counting of which, he certainly would have lost his cause. But he urged this reasonable demand, that his opponents would shew him how *Moledeth* could, without doing violence to the rules of Hebrew grammar, be asserted to be a participle-passive, and translated, as I have done above, *Nata*. This they did not, and indeed could not do, so long as they pronounced the word *Moledeth* ; for in the participle passive, (*Hophal*) it must necessarily be pronounced *Muledeth*. He thus had always the best of the argument ; for the true answer to his question, which Dr. *Luther*, a century before, would have given at the first glance, if he had seen a Dissertation of similar import, not one of the defenders of the common and ancient

explanation, was then able to give. That answer is this : The Hebrew מולדת, if we do not follow the Jewish vowel points, but the ancient Mosaic text only, may be as properly pronounced *Muledeth* as *Moledeth*; and in the former way, all the ancient translators, who lived long before the æra of the points, understood it as a passive participle. The whole proof of *Bohl's* interpretation rests, therefore, only on the points; which, however, is just the same as if it rested on nothing at all; for the points are not only not from the hand of Moses, but very certainly of more recent introduction than the fifth century of the Christian æra.

This answer, of which he had no idea himself, none of his opponents gave him; and the reason was, that the state of learning among the divines of Germany was then extremely bad; among the few that did understand any thing of Hebrew, the *Buxtorfian* doctrine of the high antiquity and divine origin of the Jewish vowel points, was received almost as an article of faith.

It will, perhaps, be the judgment of the reader, that the matter is still in suspense, and the argument equal on both sides; and that we may either, with *Bohl* and the points, read *Moledeth*, and so prohibit the union of children of former marriages; or, with the ancient translators, make it *Muledeth*, and so permit it. We are not, however, in this predicament, so far as I understand the matter; for, in my opinion, the bare Mosaic text furnishes a decisive argument against *Bohl*. If Moses had intended to say in the active voice, *Who hath borne children to thy father?* we

should have found the words, מוֹלֶדֶת לְאָבִיךָ, (*Moledeth leabicha*); whereas מוֹלֶדֶת אָבִיךָ, (*Moledeth Abicha*), if we attempt to translate it actively, and honestly follow the ordinary usage of the language, gives this preposterous meaning, *Who hath borne thy father?*

Were it not for this, I should, for my own part, really be inclined to *Bohl's* opinion; and for this reason, because I should then understand what the 11th verse implied of itself, and wherein it differed in meaning from the 9th. I would not, however, on that account, insist with *Bohl*, that our Christian marriage-laws should be altered, and that the Consistories should change the tone of their decisions. But I would reckon the prohibition of the marriage of children, in the case in question, as one of those of the second class that were given to the Israelites only, and not meant to be obligatory on Christians. If, however, the sovereign happened to be of a different opinion, and conceived all the Mosaic marriage-laws binding on Christians, I should by no means object to his pleasure in prohibiting the marriages in question; for with us, at least, where a widow, with children, commonly engages in a second marriage, with the hope of having them supported and educated by her second husband, and takes them with her of course into his family, there arises from their respective step-children having liberty to intermarry, more danger of early corruption than could possibly arise from marriage with a father's or mother's sister, which Moses has prohibited.

ART. CXVI.

Of the Marriage of Relations less near than those already mentioned.

§ 16. I NOW come to notice the other marriages between relations, which Moses mentions in his law, and some of which are prohibited, and others permitted.

1, 2. In Lev. xviii. 12, 13. he prohibits marriage with a father's or mother's sister ; and in chap. xx. 19. he repeats the prohibition, but without specifying the punishment of transgressing it, adding only the words, *they shall bear their blame*. Whether we are here to understand the full sister only, or the half-sister also, is a question not fully decided, and of which I have treated in §. 108. of my Mosaic Marriage Laws.

3. Marriage with a deceased wife's sister he permits, but prohibits, on the other hand, the marrying two sisters at once. The words of the law, Lev. xviii. 18, are very clear, *Thou shalt not take a wife to her sister, to be her rival, and to uncover her nakedness along with hers, in her lifetime*. (M. L. §. 77, 78.) After so distinct a definition of his meaning, and the three limitations added,

(1.) As to the one being the other's rival, (to express which, we may observe, by the way, that the same word is used, as in 1 Sam. i. 6. where two wives have but one husband ; and in Arabic it is found in the same sense.)

(2.) As to the man's uncovering the nakedness of both ; and,

(3.) As to his doing so in the life-time of the first, I cannot comprehend how it should ever have been imagined that Moses also prohibited marriage with a deceased wife's sister,—that very connection which we so often find a dying wife intreating her husband to form, because she can entertain the best hope of her children's welfare from it*.

What Moses prohibited, was merely *simultaneous polygamy* with two sisters; that sort of marriage in which Jacob lived, when he married Rachel, as well as her sister Leah. The reason of this prohibition it is not difficult to discover. Sisters, in whom nature has implanted a principle of the strongest affection, are not to be made enemies to each other by polygamy. That two wives of the same husband should love each other, is inconceivable. The man, there-

VOL. II.

H

* The reason why marriage with a deceased wife's sister has been so generally understood to be forbidden, is, that Moses has prohibited marriage with a brother's widow; and expositors, in order to have it in their power to draw inferences from other prohibitions, have maintained, that he not only prohibits the particular marriages specified in his law, but also those equally near in point of relationship. Now because it was an insurmountable objection to this doctrine of degrees, that Moses permitted marriage with a wife's sister, and prohibited it with a brother's widow, they found it necessary to pervert entirely, notwithstanding its perfect clearness, the meaning of this precept, to convert it into a general prohibition of polygamy, and, in contradiction to the style of all the marriage-laws, to understand the word *sister*, not of the relation properly so called, but of any woman whatever, not at all related to the wife. What I have already said in Art. XCIV. on the undoubted toleration of polygamy by Moses, and in § 78. of my M. L. may be consulted, for the further confutation of this perversion.

fore, who wishes to live in polygamy, and make *two* wives hate each other from jealousy, should make use of strangers, and not of sisters. The history of Jacob, who, contrary to his inclination, was brought into this predicament, furnishes a very animated representation of the reasons on which this law is founded. Enmities between sister-wives will, besides, always be more violent, and from their having known each other too intimately all their lives, more unmannerly than where they are strangers to each other, and cannot so freely venture to outrage decency in their mutual hatred.

4. Marriage with a deceased brother's widow is prohibited in Lev. xviii. 6.; and the prohibition is repeated in chap. xx. 21. with this punishment annexed, *They shall be unfruitful*. This does not mean that God would miraculously prevent the procreation of children from such a marriage; for God nowhere promises any continual miracle of this nature; but only that the children proceeding from it should not be put to their account in the public registers; so that in a civil sense they would be childless. The Hebrew word עֵרִירִי, (*Ariri*) *unfruitful*, has this meaning, and is applied to the case of a man who has children, but will not be heired by them. Thus in Jer. xxii. 30. it is said of a king, who certainly had children, though they did not receive his inheritance, *Inscribe this man as childless; for of his posterity none shall prosper, nor any sit upon the throne of David*. For the children of such a marriage would be ascribed to the deceased brother; and that, among the Israelites, where a man made so much of the honour of being called *Father*, was a very sensible punishment. The

LXX., *Augustine*, and *Aben-Ezra*, understood our text in this manner. (M. L. § 76.)

From this prohibition of marrying a brother's widow, Moses himself, in condescension to a point of honour among the Israelites, makes an exception, which has been already illustrated in Art. XCVIII. He does not merely *permit*, but he *commands* the next brother, as a civil duty, to marry her, if her husband has left no children; and although a lawgiver divinely commissioned, may, on account of the *hard-heartedness* of his people, on civil grounds, *permit* what is in itself sinful, it is not conceivable that he should *enjoin* any such thing. What he commands, must be neither contrary to the law of nature, nor displeasing to God. The exception, therefore, here made by Moses may be considered as a sure proof, that, in regard to marriages not nearer than with a brother's widow, even granting the prohibition to extend to all men, it is not contrary to the will of God, that dispensations should for weighty reasons be allowed. (M. L. chap. ix.)

(5.) Marriage with a paternal uncle's widow is prohibited, Lev. xviii. 14.; and in chap. xx. 20. the punishment of dying childless is annexed to it. This is the same punishment as in the case just stated, and it here implies, that the children sprung from the marriage would be ascribed not to the natural father, but to the deceased uncle. For, to explain this phrase, *they shall be unfruitful*, of capital punishments, which would in various ways annihilate the unborn children of the marriages in question, in the mother's womb, is horrible; and there are but very few who charge

Moses with such inhuman cruelty ; and if those who do so, appeal in defence of their opinion to the word *die*, they only fall into a new absurdity ; for as that word does not occur in the prohibition of marriage *even with a brother's widow*, but only *they shall be childless*, they would thus be under the necessity of maintaining, that Moses had inflicted a more severe punishment on marriage with a more distant, than with a nearer relation. (M. L. § 76.)

Whether the two last prohibitions (Nos. 4, 5.) relate only to full brothers, or extend also to step-brothers, may admit a question. (M. L. § 108.) Thus much appears to me at least, that if the half-brother was only our own, or our father's brother by the *mother's* side, Moses did not prohibit our marrying his widow ; for with the widow of our own, or our father's uterine half-brother, we were not bound to a Levirate marriage, because he belonged not to our family. Here, therefore, neither the *ratio legis* formerly pointed out, and deduced from expectancy, nor yet the threatened punishment could hold ; for the children of the marriage were not to pass into any other family, or even tribe, to which the deceased uterine brother might happen to belong. On the other hand, in the case of the half-brother by the father's side, the *ratio legis* does appear to apply ; for if the younger brother was no longer alive, the widow of the elder, dying without issue, devolved upon the son of the younger. Were it not for this, there would certainly be good ground for the conjecture, that where Moses mentioned brother or sister, without adding, as he does in chap. xviii. 9. *son or daughter of the father*, or

Art. 117.] *Only the specified Marriages forbidden.* 117
son or daughter of the mother, he always meant full blood.

There is yet one marriage concerning which I have an observation to make, namely, that with a deceased wife's stepmother. However close that connection may appear to us, Moses nowhere forbids it; for the statutes of Lev. xviii. 17. xx. 14. do not relate to it, because the Hebrews never called a stepmother, *mother*, but only *father's wife*. This marriage too, was actually not uncommon, nor was it disapproved. David, who was Saul's son-in-law, inherited his seraglio, and this is by the prophet Nathan so far from being reckoned among things unlawful, that he describes it as a favour from God, for which David had been ungrateful, 2 Sam. xii. 8. (M. L. § 108.)

ART. CXVII.

Only those Marriages are prohibited, which Moses has expressly specified, and not others, though in like degrees of affinity.

§ 17. WITH regard to the marriages mentioned as forbidden, in the preceding Article, there arises the question, whether Moses only prohibits the marriages which he expressly mentions, or others besides, not mentioned, where the degree of relationship is the same? This question, which is of so great importance in the marriage-laws of Christian nations, and which, from our imperfect knowledge of Oriental customs, has been the subject of so much controversy, properly regards the following marriages never mentioned by Moses, viz.

1. With a brother's daughter.
2. With a sister's daughter.
3. With a maternal uncle's widow.
4. With a brother's son's widow.
5. With a sister's son's widow.
6. With a deceased wife's sister.

These marriages we may, perhaps, for brevity's sake, be allowed to denominate the *six marriages*, or the *consequential marriages*. They are as near as those mentioned in the foregoing Article, and prohibited. Moses never mentions them in his marriage statutes; yet the ground of his prohibitions is nearness of relationship. The question, therefore, is, Are these marriages to be, or not to be, considered as prohibited, by just inference from the letter of his laws?

In my opinion, *they are not*; (M. L. § 81,—104.) and in proving this, I will most willingly concede to those of a contrary opinion, a multitude of objections against their consequences, as deduced from the letter of the Mosaic statutes; such, for instance, as this, that, *according to the principle of juridical Hermeneutics, prohibitions are not to be extended beyond the letter of the law*; (M. L. § 82.) for I readily acknowledge that this rule, how valid soever in our law, is nevertheless not universal, and not always safely applicable to very ancient laws, if we wish to ascertain the true meaning and opinion of the lawgiver: Or this, again, that *in these marriages there is no violation of Respectus parentelæ*; (M. L. § 91.) for I have already admitted that that principle, to which the Roman lawyers appeal, was not the foundation of the Mosaic prohibitions. I will go yet one step farther in

courtesy, and promise to appeal on no occasion whatever to the common opinion of the Jews, or to those examples of ancient Jewish usage, whereby the marriages here mentioned are permitted; (M. L. § 85, —90.) for all the Jewish expositors, and all the examples they can produce, are much too modern for me to found upon, where the question is concerning the true meaning of a law given some hundred, or rather thousand, years before them. So much generosity on my part, many readers would, perhaps, not have anticipated; but I owe nothing less to impartiality, and the love of truth.

My reasons, then, for denying, and protesting against the conclusions in question, are the following:

1. Moses does not appear to have framed or given his marriage-laws, with any view to our deducing, or acting upon, conclusions which we might think fit to deduce from them: for if this was his view, he has made several repetitions in them, that are really very useless. What reason had he, for example, after forbidding marriage with a father's sister, to forbid it also with a mother's, if this second prohibition was included in the first, and if he meant, without saying a word on the subject, to be understood as speaking not of particular marriages, but of degrees?

2. Moses has given his marriage-laws in two different places of the Pentateuch, viz. in both the xviii. and xx. chapters of Leviticus; but in the latter of these passages we find only the very same cases specified, which had been specified in the former. Now, had they been meant merely as examples of degrees of relationship, it would have been more rational to

have varied them; and if it had been said, for instance, on the first occasion, *Thou shalt not marry thy father's sister*, to have introduced, on the second, the converse case, and said, *Thou shalt not marry thy brother's daughter*. This, however, is not done by Moses, who, in the second enactment, just specifies *the father's sister*, as before; and seems, therefore, to have intended that he should be understood as having in his view no other marriages than those which he expressly names; unless we chuse to interpret his laws in a manner foreign to his own meaning and design. (M. L. § 83.)

3. If, in opposition to this, the advocates of the contrary opinion urge, that the *six consequential marriages* are just as near as those expressly prohibited; my answer is, that though here they may seem to be in the right, there is yet, according to the customs of the Hebrews, so great a distinction between these two classes of marriages, that any conclusion drawn from the one to the other, is entirely nugatory. For,

(1.) In the *first* place, among the Oriental nations the niece was regarded as a more distant relation than the aunt. The latter, whether fathers' or mothers' sister, her nephew might see unveiled, in other words, had much nearer access to her; whereas the former, whether brothers' or sisters' daughter, could not be seen by her uncle without a veil. Now, this distinction refers to the very essence of the prohibitions; for it is not the natural degree of relationship, but the right of familiar intercourse that constitutes the danger of corruption. If, therefore, these laws were given for the purpose of preventing early debauchery

under the hope of marriage, marriage with an aunt, and with a niece, are by no means on the same footing; for to the former, by the law of relationship, an Israelite had a degree of access, which in the case of the latter was not permitted. Both stood in the same degree of affinity according to the genealogical tree, but not so by the intimacy of intercourse permitted with them.

(2.) In the *second* place, there was a difference equally great, or even greater, made between the paternal uncle's widow on the one hand, and the widow of the maternal uncle, or of the brother's or sister's son, on the other. (M. L. § 103.) For if by that ancient law, of which the Levirate-marriage may be a relique, the widow was regarded as part of the inheritance,—I, in the event of my father being dead, received *his* brother's widow by inheritance, but not my mother's brother's, because he belonged to a different family; nor yet could I thus receive the widow of my brother or sister's son, because inheritances do not usually ascend; or, at any rate, an inheritance of this kind; to make use of which, a man must necessarily not be old, if the person who has left it was young. In the case, therefore, of the prohibited marriages specified by Moses, there was by the ancient law an expectancy, and by the Levirate-law it became a duty, to marry the widow of a paternal uncle, who had died childless, and to raise up seed to him; but in the case of the marriages not prohibited by Moses, there could be no room for either.

If, by reason of this distinction, there be, in regard to the brother's son's widow, as belonging to one family, the least doubt remaining in the mind of the reader, I hope to

remove *it* likewise, into the bargain. Were I to receive her by inheritance, it must be presupposed, that she would have first fallen naturally to my father, and only in consequence of his being no longer alive, have devolved upon me, one degree more distant. But any inheritance so abominable as that of a son's widow devolving to his father, we can scarcely figure to ourselves; although *Thamar*, from resentment and despair, conceived the idea of her having such a claim, and contrived by secret artifice to enforce it, Gen. xxxviii. Rather would she fall to her husband's brother, and were he not alive, naturally devolve to his son. It is therefore manifest, that the father's brother could never have had that expectancy of his brother's son's widow, which might be attended with such pernicious consequences as I have already remarked.

4. The strongest and most decisive argument against the *consequential system*, and the reckoning by degrees, is drawn from the case of marriage with a deceased wife's sister; (M. L. § 99, 100.) The relationship here is as near as that of a brother's widow; and yet Moses prohibits the marriage of a brother's widow, and permits that of a deceased wife's sister, or rather (which makes the proof still stronger,) he presupposes it in his laws as permitted; and consequently, wished to be understood as forbidding only those marriages which he expressly specifies, and not others of the like proximity, though unnoticed.

The reader who is not satisfied with these remarks, may consult the 7th chapter of my *Treatise on the Marriage Laws*, where he will find many particulars more fully detailed. But here I cannot say more, without dwelling too long on one part of my subject.

CHAPTER VIII.

OF COHABITATION, DIVORCE, AND PROVISION FOR WIDOWS.

ART. CXVIII.

Law respecting Cohabitation.

§ 1. IN regard to cohabitation, or conjugal duty, the Mosaic law was somewhat more precise and strict than our European laws generally are. Only we are not fully acquainted with all its particular enactments on this subject, because they partly rested on more ancient usage, and were not expressly pointed out in the written law.

Our laws no doubt require that the husband shall perform matrimonial duty to his wife; but as to the time and frequency of performance they determine nothing certain; nor is there any legal ground of complaint against a husband on this score, except in the case of total refusal, or of impotence, if charged immediately after marriage. In countries where monogamy prevails, as with us, this is quite sufficient. For where a man can have only one wife, it may fairly be supposed, that unless when either impotence, or excessive and implacable enmity prevents him, he will cohabit with his wife often enough. To this he will be

sufficiently prompted by his natural appetite, to which the law may very safely leave the matter altogether, as long as it does not permit polygamy or concubinage.

But in a land of polygamy the case is quite different. For where that is established, a husband may perhaps take more wives than he is able to satisfy, or may have such a predilection for a favourite one, as that the others shall very seldom enjoy him as a husband, and may be entirely neglected. This is great injustice; for they cannot extinguish their natural passions, although the husband refuses to gratify them, and deprives them of their rights, to please another. If then the laws are regulated by the proper feelings of humanity, they are bound to prevent such injustice, and give the injured wife a right to complain, and a prospect of satisfaction, not only when entirely, but when too long neglected. And thus are the laws in Turkey actually constituted, at least for people of the middle and lower classes; for the great, who in despotic countries are above the law, make an exception. To our manners it may appear indelicate; but *Mot-raye* informs us, in his Travels, (vol. i. p. 250.) that the Turkish law obliges husbands to cohabit with their wives so many times every month, and that, if they neglect to do so, the wives go and lodge complaints against them before a magistrate. In a land of polygamy, however, where the female sex is so much debased, and from the non-gratification of their desires driven to extremities, and, as it were, to despair, delicacy is quite out of the question. In a state so unnatural, even virtue and honour can scarcely be expected to remain. Cohabitation, when it becomes a duty, with a legal

sanction, loses all its allurements, and is considered as a most irksome servitude. With those who approve of this plan, I will not dispute ; but only observe, that such is the natural consequence of polygamy ; and where people live in that situation, they must put up with the laws that thence result.

Although Moses nowhere declares how often the husband is bound to cohabit with the wife, he actually presupposes a law, by which that point is determined ; for in Exod. xxi. 10, 11. he ordains,

1. That the concubine appropriated to the son shall, in the event of his second marriage, lack nothing of her conjugal right in this respect. The Hebrew word here is *ענה*, (*ona*) cohabitation. The radical term, *ען*, (*un*) properly signifies *to dwell*, both in Hebrew and Arabic ; but it is used also in Arabic to denote *matrimonial cohabitation*, which is worth remarking in illustration of the passage.—He ordains,

2. That if of this right she be in any measure deprived, she shall then obtain her freedom ;

From which it is manifest, that the period of cohabitation was fixed, and that complaints of the breach of this duty were listened to, and were not unusual.

The exposition which some, both Jews and Christians, have given of this law, viz. that “ the husband, “ who previously cohabited with his wife once a week, “ was bound, if he took four wives, for instance, to “ cohabit with each of them once every four weeks,” —is clearly contrary to the literal tenor of the precept. Can this be the meaning of *not diminishing cohabitation* ? If so, then upon the same principle, because in this very same verse, Moses speaks of the

wife's maintenance, he is fairly to be supposed to have enacted this absurd law, that when a man takes a second wife in addition to his first, he is bound to give both no more food than one used to consume before. His words are, "If he give him (viz. his son) another wife, he shall not diminish her (his concubine's) maintenance, clothing, or cohabitation." Every reader will now judge what Moses meant.

We find even long before his time, that in the state of polygamy every wife had her night. Rachel (Gen. xxix. 14,—16.) sells her turn to Leah, and that for a supposed specific for a love potion; and the truly good-natured husband is obliged to be satisfied with the bargain she had made, and to sleep that night with Leah.

I have already said that Moses nowhere specifies, but presupposes it as well understood, how often the husband was bound to cohabit with every wife. Perhaps it was once a week, except at those times when nature, or a regard to the health of a suckling, forbade it. The Rabbins have made a variety of regulations on this point, which they represent as Mosaic law; but they are nothing more than notions of their own, of later date by some thousand years. The reader will find them in the credulous *Selden's* treatise, *De Uxore Hebraica*, lib. iii. c. 6. The schools of *Hillel* and *Shammai* had a dispute as to the time during which a man might, on account of a vow, refrain from cohabitation with his wife. *Hillel* allowed only eight days, but *Shammai* fourteen. The Talmud gives a literary man the privilege of sleeping with his wife but once in two or three years, because he has so

much to do at his studies ; but at the same time, it advises him to do so once a week. Day-labourers in the fields were bound to perform this duty twice a week ; and vigorous young men, every day.—These are mere conceits of the Scribes, without any authority from the Mosaic law. Moses, indeed, by making a Levitical impurity the consequence of cohabitation, seems to have intended to interpose a hindrance, at least to its daily use ; and physicians maintain, that that is by no means conducive to nuptial fecundity. The statute on this subject occurs in Lev. xv. 18. ; and we shall have to examine it in the sequel, when we come to consider the Levitical impurities.

ART. CXIX.

Concerning Divorce.

§ 2. ON the subject of divorces, Moses seems by no means to have thought with indifference, but on the contrary, when they took place without sufficient reasons, to have regarded them, in a moral view, as a great evil, or, to use the theological expression, sinful. At least for my part I cannot understand his words in Gen. ii. 24. *Therefore a man may leave father and mother, but he shall cleave to his wife, and they shall be one flesh*, otherwise than in this sense, that to leave one's wife is even a still greater sin than to abandon one's father and mother, and cease to perform those duties towards them, that nature and gratitude so strongly enforce. (M. L. § 133.) A legislator, however, neither can nor ought to prohibit, that is, to

charge the magistrate with the duty of preventing by force, every thing that is morally evil ; (Art. V.) and accordingly Moses has, as Christ expresses it, *on account of the hardheartedness of the Israelites*, (Matth. xix. 8. Mark x. 5.) permitted divorce on civil grounds.

The Mosaic statute on this subject occurs in Deut. xxiv. 1,—4. I shall begin by giving a true translation of it, with the view of distinctly pointing out the situation of the pause between the *Protasis* and *Apodosis*, which translators commonly misplace, and thus misrepresent the meaning of the law.

“ If a man has taken a woman to wife, and she
 “ please him not, because he findeth a defect in her,
 “ and he write her a bill of divorce, and give it into
 “ her hand, and dismiss her from his house, and she
 “ actually leave his house, and marry another hus-
 “ band ; and if this second husband also conceive a
 “ hatred of her, and write her a bill of divorce, and
 “ give it into her hand, and dismiss her from his
 “ house ; or if this second husband, whom she hath
 “ married, die : her first husband, who had put her
 “ away, may not take her again to wife, after she has
 “ allowed herself to be defiled. This were abomina-
 “ tion to God ; and the land which Jehovah thy God
 “ giveth thee for a possession, thou shalt not pollute
 “ with sin.”

From this translation it is quite manifest that Moses does not properly *give* the liberty of divorce by his written law, but presupposes it from more ancient usage as well understood ; and only limits it in such a manner, as that certain abuses, and particularly the resumption of a divorced wife that had been married

to a second husband, might be prevented. If, with other translators, as with *Luther*, for example, we place the *Apodosis* in the first verse, thus,

“ If a man take a wife and marry her, and she find
“ not favour in his eyes, on account of some disgust :
“ he shall write her a bill of divorce, &c. ;”

Then, according to the Hebrew, (at least, if at the beginning of the second verse, an Ellipsis of the particle *וְ*, *if*, be not admitted), what follows must also be translated as a command :

“ And she shall actually leave his house, and marry
“ another man, and he shall hate her, and write her
“ a bill of divorce, &c.”

But that this could not be what Moses meant, every one must immediately perceive.

I now proceed to make the necessary remarks, in illustration of this law.

I. Moses does not speak of what we mean by the word divorce, (for our divorces take place *judicially*) but of an extrajudicial divorce, which, however, was valid in law, even though it rested entirely on the husband's pleasure. As we have no such thing among us, our German law, of course, has no peculiar term for it.* Were I to give it a name, it would be that which *Luther* has already used in his Bible, *Scheide-*

* Some have been inclined to make the following distinction—to call the judicial divorce, *Divortium*, and the other *Repudium*. But these are commonly philosophers and not lawyers. In the Roman law, at least, there is a different distinction between *Repudium* and *Divortium*, which every lawyer knows from the Pandects. I wish it were otherwise, but words, current in law, I cannot rebaptise without leave of the faculty.

brief, (letter or bill of divorce,) or *seine Frau von sich lassen*, (dismissal of one's wife.) And these terms, I here beg leave to use in a sense, that excludes every idea of a reference to judicial procedure.

The ambiguity of the term, and our unacquaintance with the Hebrew divorce, which among us indeed, is quite unheard of, has certainly given occasion to misconstructions and doubts, which are often of serious consequence in our marriage-law, and even in theological morality. For as Christ, presupposing the Mosaic law in common use, and well understood among the Jews, has declared, that although divorce had, *on account of the hardness of their hearts*, been, on civil grounds, permitted by Moses, it was nevertheless, on conscientious grounds, *unjust to dismiss a wife, excepting in the case of her having committed fornication*; commentators, from not entering into the ideas of ancient times, and into the nature of laws quite different from ours, have interpreted this declaration, of a judicial divorce like ours, and then, with very serious and learned faces, proposed a variety of questions, quite unsuitable to the case; as, for instance, how can our recognition of divorce, on account of what we have St. Paul's authority for, namely, wilful dereliction, (*malitiosa derelictio*,) or any perfectly similar cause, be reconciled to the words of Christ? That question is not at all to the purpose here: for to the wife who wickedly abandons *him*, her husband gives no bill of divorce, but only receives from the magistrate, permission to enter into a second marriage, after *she* has dissolved the first. Of this, I shall speak at more length in the next Article; but here I must

found upon it, and warn the reader carefully to distinguish *three* different things, which, for want of particular names, sufficiently common, are often taken for one and the same thing.

1. First, *the bill of divorce*, whereby the husband, without any legal aid or recognition, dissolves the marriage himself. Of this our laws know nothing.

2. Secondly, *the judicial divorce*, which may take place, either with or without liberty to proceed to a second marriage.

3. And Thirdly, *the Magistrate's permission to marry again*, which among the Jews, was never required. That permission which we term divorce, if the question is, whither on account of *malitiosa derelictio*, a divorce can be recognized, without interfering with Christ's decision, never was requisite among the Jews, and by the Mosaic law, because polygamy was permitted. Every man had it, without any recognition of the magistrate, even while his wife remained unseparated from him.

I must here make this additional remark, that a judicial divorce, on account of a wife's whoredom, could not possibly take place among the Jews, but, as our form of marriage expresses it, *till death did them part*. For if a court of justice had had to separate a man from his wife on that ground, it must previously have had *proof* of her having committed the crime, that is, of her having either been found not to be a virgin on her marriage night, or having subsequently violated her nuptial fidelity. But if this was proved, she was stoned, and then indeed, as I have said, death *did* part them. It shews strange ignorance, considering

all this, to refer the words of Christ to our judicial divorce, and thereon to build a law, by which it must be judicially proved, with all the strictness requisite in a criminal trial, that the wife has been unfaithful, before the divorce can follow.

II. The reasons for a bill of divorce, Moses leaves entirely to the justice, conscience, or pleasure of the husband. *If the wife pleased him not, and he found ought wherewith to charge her*, he might dismiss her, without taking the trouble to tell any body what her fault was.

On this point, there was, about the time of Christ, a dispute between the two Jewish sects, or rather schools of Hillel and Shammai, in which, neither was in the right. But the detail of this, I reserve to the following Article. At present, I only remark, that of the two expressions just quoted, neither, in the original, conveys the least idea of unchastity, or any crime whatever. The one, literally translated, would be, *if she find not favour in his eyes*; so that in the Hebrew, it seems expressly to point at the particular circumstance, of her not appearing to him sufficiently beautiful;* the literal version of the other is, *if he find in her the nakedness of a thing*; that is, any defect, or any thing to find fault with; and that, said the school of Hillel, might be, that she miscooked his greens, or that another was fairer than she. No doubt the husband, who dissolved a marriage for such bad reasons, was wrong: but then, the laws, yielding to the people's hardness of heart, did not hinder him.

* Chen, (יָפֵי), is the very word used to denote beauty.

III. To the dissolution of a marriage, to make it perfectly complete, and valid in law, Moses made certain circumstances and conditions requisite, which perhaps, can neither be sufficiently marked nor understood, unless we attend to the abuses that might be then prevalent. The consuetudinary law of the Arabs, as Mahomet has preserved it, and converted it, in part, into a written law, serves to throw considerable light on this point.*

13

* I will here quote, from the Koran, the two principal passages, illustrative of this observation, because I shall have occasion to allude to them repeatedly. The first occurs in Sura ii. 226,—233. “ God
“ will not punish you for a rash oath, but for such an one only, as
“ comes properly from the heart. God is gracious, and willingly
“ forgives. To those, who swear to separate from their wives, a
“ pause of four months is allowed. If in this interval they bethink
“ themselves, God is merciful, and forgives them. After separation,
“ wives shall also wait three monthly purifications, nor may they, as
“ they believe in God, and in the last day, conceal it, if they should
“ happen to be pregnant;” [literally, *hide what God has formed in
their belly,*] “ and then it were better, that their husbands, if inclin-
“ ed to reconciliation, should take them back.—Twice may they se-
“ parate, and then let the husband either keep his wife in kindness,
“ or in kindness let her go: but nought may he keep of what gifts
“ he has once given her; lest both parties dread that they should not
“ be able to keep within the limits of forbearance prescribed by
“ God;” [that is, *lest if they continued together, they should sin
against God, by hatred and quarrelling;*] “ for were that to be ap-
“ prehended, it would be no sin in the wife, to leave some part of
“ the gifts conferred upon her, in order to be loosed from the marri-
“ age; but it would be a sin to live in hatred and quarrelling, con-
“ trary to God’s commandment. If he has parted from her” [that
is, *if the divorce, after the period of reflection has elapsed, is actual-
ly completed,*] “ it is not lawful for him to take her again until she
“ has married another husband; but if that has taken place, and he

The Arabs, as we see from the Koran, usually divorced their wives by an oral declaration, which is not surprising, considering that few among them could write. Mahomet, therefore, admonished them to take witnesses, when they dismissed them. Sometimes

“also part with her, it is no crime to take her again, if only both parties think that they will in future, treat each other in a way pleasing to God. If ye have parted from your wives, and the pause of the four months have come to an end, either keep them in kindness, or kindly let them go: but ye may not detain them by force.—Have ye parted from your wives, and is the pause elapsed; then hinder them not to marry other husbands, with whom they are agreed. Thereto God admonishes every one who believes in him, and in the last day: and it is just and equitable.”

The second passage occurs in Sura l.v. 1,—6. “Ye faithful, if ye part from your wives, do it by fixing a certain time, and wait that time, and fear God. Ye shall not suddenly drive them out of your houses, nor shall they at once leave your houses, unless it were for a manifest deed of shame. These are the rules which God prescribes: and whoever transgresses them, does himself the greatest injury. Man cannot know what changes God may bring about;” [*viz. whether, during the pause, they may not be reconciled again, and then the husband be glad to keep his wife.*] “Has, however, the appointed time come to an end, then either kindly keep, or kindly send them away, and take some honest men as witnesses, and keep unto God, what is testified. Thereto be every one warned, that believes in God, and the last day: and to the man who fears him, God will shew a happy issue of his troubles, and support him where he could not have conceived it. He who trusts in God, has enough, and obtains what he seeks. God has to every one appointed his fate. But if, after waiting three months, the monthly purification ceases, so that the wife herself believes it will not return, or at least, if she receives no monthly purification, or her pregnancy is become fully certain: then the pause continues until the time of her delivery.—Grant her accommodation with you, as good as you can give; do nothing to hurt her. Begrudge her nothing, and if she is actually pregnant, expend what is need-

the separation was made by an oath ; with regard to which, however, Mahomet said that God would forgive it, if, before his wife actually left the house, the husband changed his mind, and wished to keep *her*, and not his oath. The divorce, however, was considered as absolutely irrevocable, in certain cases ; particularly if he said to his wife, certain words, on the occasion, of which the import was, *If I ever have to do with thee again, be incest laid to my charge, as abominable as if committed with my own mother, in the most abominable manner.* All these matrimonial disjunctions took place by word of mouth.

It is easy to conceive what abuses and disputes might ensue from marriages being *orally* dissolved ; Moses therefore, required some *written* evidence of all such transactions. By his law, it was necessary that a bill of divorce should be written, and actually delivered to the wife, by which she might be enabled to certify, on all occasions, the truth of her riddance from her first marriage, together with her right to enter into a second. This process, no doubt, caused many hindrances, as but few Israelites understood the art of writing : so that it became necessary to resort to some judge, or literary person, in order to have the bill of divorce written : but this delay was very probably in-

I 4

“ful on her inlying. Does she nurse her child herself, give her a
“nurse’s hire, and treat her well ; but if ye find this burdensome, an-
“other woman may suckle the child. He that has much, let him
“give liberally—he that has less, let him regulate his expence ac-
“cording to what God has given him. God will make joy succeed
„to sorrow.”

tended by the legislator. For in this way, a marriage could never be dissolved in the first heat of passion; and the husband might perhaps change his mind: or the person employed to write the divorce—probably a priest or a Levite, because that tribe, as we have seen in Art. LII., devoted themselves to literature and the law—was perhaps a man of principle, and would previously admonish the husband on the subject. This delay, affording time for reflection, could not fail to put a stop to many divorces resolved on under the influence of passion.

IV. But even the delivery of the bill of divorce, did not render the dissolution of the marriage altogether complete. Thereto, by the Mosaic statute, this farther circumstance was yet requisite, that the wife had actually left the husband's house; and, if we may be permitted to judge from the nature of the case, and the manners of the Arabs, this must have occasioned a new delay of several months. For as the wife might happen to be in a state of pregnancy, it was necessary, at least, among the Arabs, that she should continue in her husband's house, till she had had three successive monthly purifications, and had convinced herself that this was not the case; and if again, the menstrual discharge ceased, and she did prove pregnant, then it behoved her to lye-in in her husband's house, as the child belonged to him. During this period, by the Arabic law, both parties might bethink themselves and change their minds, which Mahomet not only puts in their power, but also recommends. The Hebrew husband was as little likely to dismiss his wife from his house, until certain whether she was pregnant

or not, as the Arabian ; and as the bill of divorce only acquired its full validity at her leaving the house, he had, in like manner, time to bethink himself, in the event of her being content, after receiving the bill, still to continue the marriage ; and that man must know nothing of the human mind, nor think how often the quarrels of married persons are made up on cool reflection, who can entertain any doubt, whether by means of these delays, a multitude of intended divorces must not have been prevented.

V. Even after the dissolution of the marriage was complete, if both parties were satisfied to renew the connection, Moses put no obstacle in the way, if only the divorced wife had not married another husband.

VI. If she had done so, however, it was never again in her power, though loosed from him, either by his death, or a second divorce, to remarry her first husband.

The reason of this is obvious. Lovers and married people, that have quarrelled, are easily reconciled again, or conceive a desire, at least, to renew their ancient intimacy. Now, if the first husband had had it in his power to get back his wife, on the death of the second, the latter could not have been secure of his life, but might have been made a sacrifice to their reconciliation ; and if again, at the solicitation of, or in consequence of a bribe from, the first husband, the second gave her a divorce, and the first husband thus had it in his power to recover her, during the life of the second ; in the country where such connections became in any degree common, decency and honesty must soon have been extinct. The chastity of a wo-

man is but poorly protected, when she has become so intimate with a man, as that he dare venture to make such a proposal, without her feeling the modesty of her sex instantly and deeply wounded. Without that modesty, firmness, morals, and I might almost add religion, prove but weak and untenable defences of female chastity : and it is almost a maxim, that when chastity has been once conquered, it can never afterwards long resist the conqueror.

There cannot be a more complete counterpart to the Mosaic statute, than that law of Mahomet, by which, when the divorce was once complete*, and the wife gone from his house, there was no other possible way for the husband to recover her, than by another man's marrying and cohabiting with her, and then to gratify the former, divorcing her in like manner. The man, therefore, who was fain to have back his wife, was usually under the necessity of entreating a friend to do him this singular act of charity. Mahomet, or rather the ancient Arabians, from whom he adopted this rule, may have had a very good design in view, by establishing it, namely, that it might operate as a sort of punishment, and a means of deterring

* Mahomet (in Sura ii. 231. of the Koran) says, somewhat ambiguously, *when he has parted from her*. This I understand of a final divorce, now completed by the wife's departure from his house ; because, before that takes place, and while she remains in the house, Mahomet himself recommends a reconciliation. Others, however, explain it otherwise, thus : *when he has parted from her a third time*, (which is the explanation of Marracci, and many Mahometan expositors,) or, *when he has separated from her with the oath of utter abhorrence*. The explanation which I adopt, appears the easiest and most natural.

husbands from divorcing their wives rashly, and on frivolous grounds; and they no doubt supposed, that a husband would thus think the more seriously, before he dismissed his wife. The measure, however, is too indelicate and too dangerous for the morals of a nation.

VII. For the maintenance of the divorced wife, the Hebrew law makes no provision. This is the hardest circumstance in the whole matter, or rather, the greatest compliance with the hard-heartedness of the Israelites. At the same time, among that people, it could not have been by any means so serious a hardship as it would be among us. For in a country where polygamy made females scarce, and wives cost money, the divorced wife would soon find a second husband, and, where slavery prevailed, maintenance and a master. Yet this certainly was but poor comfort after all!

VIII. The husband forfeited his right to give a divorce, if he had seduced a young woman, and been obliged, in obedience to the law, to marry her; and, in like manner, if he had falsely accused his wife of not having had the *signa virginitalis* on the wedding night; Deut. xxii. 19, 29. In this way, the liberty of divorce, which would otherwise have been most pernicious, became useful, and prevented whoredom; for many an Israelite would abstain from the seduction of female innocence, in consequence of his knowing for certain, that if he did not, he forfeited his right of divorce.

ART. CXX.

The Disputes between the Schools of Hillel and Shammai on the subject of Divorce.—The Decision of Christ upon it, with the Application thereof in our Marriage-Laws.

§ 3. I HAVE already mentioned, that the two schools of *Hillel* and *Shammai* had had many disputes about the law of divorce. These the reader will find fully detailed by some expositors of Matth. v. 32., and by *Selden*, in his treatise, *De Uxore Hebraica*, with Jewish testimonies annexed. It is not conformable to the design which I have here in view, to copy those details, or to enrich them: I mean only to mention just as much of the controversy as may enable my readers to understand the judgment which Christ pronounced on the law of divorce.

Neither of the parties were right in their comments; and both of them, if their opinions have not reached us in a state of misrepresentation, committed the mistake of confounding moral and civil law together, and of not distinguishing between what a court of justice, and what conscience permitted.

The school of *Hillel* maintained, that Moses allowed a man to divorce his wife for any reason whatever, even the most frivolous; such, for instance, as having overdone his dinner, or because he happened to fall in with a more beautiful woman; and in this notion, the Hillelites were no doubt correct, if the strict meaning of the Mosaic statute is the point in question. But

then they very generally (for I will not charge them with it universally,) fell into the unpardonable error of teaching this unfounded doctrine, that it was also lawful in the sight of God, and agreeable to the dictates of conscience (*in foro Conscientiæ*,) to give a wife a bill of divorce, on any pretence whatever. This doctrine is certainly tyrannical and unjust. Without taking into consideration the other consequences of divorce, which render it sinful, when it is rashly resolved on, and put in execution, let us only put ourselves in the situation of the unfortunate woman who has sacrificed her virginity, and the charms of her youthful years to a husband, and is then, when no longer what she once was, repudiated, without having deserved any blame whatever. What shall she do? Where find sustenance, at least in the style to which, perhaps, she has been so accustomed from infancy, that it has long become to her a matter of real necessity? And what man of the least delicacy of sentiment will be likely to marry her again? A marriage with a living husband's leavings, is not to every lover's taste, and is, in fact, rather a dangerous experiment besides. If she has had children, she must leave them behind her with her husband, and part from them; and how hard that is for a mother, I need not say. Can it then be morally right for me to cause a person whose affections I was once so anxious to gain, and who has nothing farther wherewith to reproach herself than that she listened to my suit, and loved me in return, to become the innocent sufferer of all this variety of wretchedness? For a man to say that he could act thus with a good conscience, were horrible,

If the other sex took up the profession of moralists, and taught such a doctrine, what should we think of it?

The school of *Shammai*, whose opinions in point of morality were more commendable, would not admit that a man could conscientiously divorce his wife for every reason alike. But falling, in like manner, into the error of making a civil statute the source of morality, they explained the Mosaic expression, ערוה דבר, (*Ervath dabar*) the nakedness of a thing, of acts of shame, and maintained, that Moses only permitted divorce, in the case of the wife having trespassed against chastity. It is very strange that so many of our commentators and divines have agreed with this school in an explanation * of the words of Moses so palpably improper, after Christ pronounced so distinct and just a decision, and declared, that Moses, on civil grounds, and only on account of his people's hardness of heart, permitted, what HE, as repugnant to conscience, must prohibit in *his* disciples.

This decision we find recorded in Matth. v. 31, 32. xix. 3,—9. Mark x. 2,—9. Christ acknowledges that Moses, in his civil law, left the giving of the bill of divorce to the husband's discretion, and says that he did so on account of their hardness of heart. Conse-

* In support of it, it has been said, that ערוה (*nuditas*) is used to denote *shameful things*, but in this there is an ambiguity. The Hebrews no doubt usually called the *partes pudendæ*, ערוה; but they did not so term a *factum pudendum*; and if, in illustration of the law in question, we were thus to misapply that phrase, we should produce this absurd sense, that a man might divorce his wife on account of her being a real woman, and not a monster. *Quia pudenda vel genitalia habet.*

quently, he explained the Mosaic statute as the school of *Hillel* understood it, and as I have also explained it in the foregoing Article ; for had Moses permitted divorce only on account of a breach of chastity, Christ could not have said that he had yielded to their refractory dispositions, in a matter which, at the beginning of the world, was not permitted, and which conscience likewise condemned. But he declared, that in the sight of God, and by the verdict of conscience, divorce was only lawful when a wife proved unchaste. He made use of the general term *πορνεία*, which includes the transgression of chastity, both in a single and in a married state, and of course comprehends the case of a woman's having committed whoredom before marriage, and being found not a virgin on the wedding-night. (Art. XCII, XCIII.) If the husband was convinced in his own mind of his wife's criminality, he had it in his power to resort to either of the following courses. He might either accuse her publicly, in which case, on her guilt being proved, she was stoned to death ; or he might adopt the milder alternative of giving her a bill of divorce privately, and without exposing or bringing her to punishment. If he pursued the latter course, which is of the two certainly the more humane, and the more conformable to the Christian doctrine, whereby all unnecessary resentment is condemned ; Christ declared the divorce perfectly lawful, not only before a civil court of justice, but before the tribunal of conscience. In this way, the husband was under no necessity of proving his wife's guilt to others, or before any court. His own conviction of her infidelity was sufficient to justify his

divorcing her, before God and his own heart. And if he dismissed her without animadversion or menace, and kept his reasons entirely to himself, she was not a little indebted to his clemency.

By some it has been conceived and regretted, that in this decision of Christ's, several legitimate reasons of divorce appear to be wanting; but if such people, will, as I have already requested, only beware of confounding the Jewish private bill of divorce, with our public and judicial divorce, and with the liberty of entering into a second marriage, these difficulties will in a great measure vanish. The following, for example, have been specified as grounds of divorce, overlooked in Christ's verdict on the subject.

1. *The wilful abandonment of a husband by his wife,* which the apostle Paul, in 1 Cor. vii. regards as a dissolution of the marriage.

Answer. My answer here is, that in this case, it is not the husband who gives the divorce, but the wife who abandons him, and dissolves the marriage. He therefore has a right to marry a second time. This then was by no means a case of which Christ could speak, when treating of divorce.

2. *The case of the wife being imprisoned, or banished the country.*

Answer. The case is here precisely the same with that of wilful abandonment. The husband does not give the wife a divorce; but the magistrate removes her from him, to which she herself has given occasion by her crimes. And here again, a second marriage is lawful in him, because the first has been dissolved without any blame on his part; but this has nothing

to do with Christ's doctrine concerning divorce: for a divorce, and liberty to marry again, are two very different things.

3. *The case of the wife denying the husband matrimonial solace.*

Answer. Here again the case is the same with a *derelictio malitiosa*. The husband gives no divorce. It is the wife who dissolves the marriage; and he is certainly entitled to enter into a new connection. Allowing even that she acts from excessive and mistaken sanctity, *her* conduct is contrary to the precepts of Christ; but not so *her husband's*, who alone is the suffering party, and in justice to be considered as thereby the party deserted, and set at liberty.

4. *The case of the wife attempting the husband's life.*

Answer. In this case he must impeach her; the consequence of which will probably be what forms Case 2. I might likewise add, that this case in fact resolves itself into Case 3.; because one single attempt of this nature makes it impossible for him afterwards to perform the duty of a husband with safety.

5. *The case of the wife murdering their common children.*

Answer. Is it possible that *Grotius* started this difficulty? But indeed we always find *him* too much the man of learning, and too little the man of reflection. If the wife murder her own children, it is the husband's duty to impeach her, else is he himself their murderer, both in the sight of God and the world. If he does so, he needs not to divorce her; for death will soon part them. If he does not, he deserves to

be obliged to endure all the misery of such a connection.

6. *The case of their implacable enmity.*

Answer. If this be mutual, the magistrate may certainly do what Moses did, and in condescension to the hardness of their hearts, separate the two discordant creatures from each other. Both of them, however, are equally guilty of sin, in harbouring a spirit of irreconcilable hatred in their breasts. If again, the enmity be only on the wife's side, the husband must exert his authority, and the magistrate support him; and if, in consequence, she run away, then the case becomes No. 1. and the husband is disengaged from the connection.

8. *The case of gross faults in housekeeping, and in the management of the children.*

Answer. This case, in my opinion, affords no just ground of divorce in the sight of God and conscience. It is rather the husband's duty to take the duties in question out of his wife's hands, and at all adventures to exercise his *imperium maritale*. The wife's superintendence of domestic œconomy is, besides, only a convenience depending on the custom of certain countries, and not an essential comfort of the married state. In countries where polygamy prevails, there is no such thing; nor do the consorts of kings ever act as their housekeepers, and yet (notwithstanding the ill-contrived doctrine of a *mutuum adjutorium* as an essential design of the married state,) they are considered as legal wives, and their children are not held illegitimate.—On this point, I beg leave to put the following case: Many people who keep mistresses,

neither burden them with housekeeping, nor with the management of their children, and indeed would not be very well off if they gave them liberty to regulate their households. Now, if with a mistress, who is commonly more expensive than a wife, a man is satisfied with mere enjoyment, I should think he might be so likewise with a wife, and could have no right to turn her away, because, besides discharging this essential duty of the married state, she did not happen to possess a talent for domestic œconomy, and educating children. Here, however, I certainly must make an exception of the case, where the law unnaturally obliges the husband to pay all the debts which the wife has contracted, or may contract. A law so unnatural, the doctrine of Christ does not contemplate; and if with that doctrine we are in such a case dissatisfied, we must blame, not its author, but the strange law which subjects us to the hardship in question. It may, nevertheless, have its remedy. There is in England a law somewhat of this nature; and this it was that reminded me of this exception, which it had otherwise been unnecessary to make.

I must now add *two* remarks, which relate to the application of Christ's decision, or, to speak more precisely, of his moral doctrine, to the marriage-law in common use in Christian countries.

I. It is usually made a fixed principle in our marriage-laws, that divorce can only be granted in those cases in which the New Testament (that is, the authority of Christ in Matth. v. and xix. and of St. Paul, 1 Cor. vii.) has declared it lawful. I by no means blame the abhorrence of divorces thus manifested in

our laws ; and would much rather wish them to exceed on the side of severity than of indulgence ; for it may easily be anticipated, *a priore*, and the Roman history experimentally confirms, what dreadful effects the unrestrained liberty of divorce may produce in the course of time, and from the progressive increase of luxury and vice. But yet it does not follow from the words of Christ, that a Christian legislator is bound to prohibit divorces in every case wherein Christ has declared them sinful. Christ himself says that Moses permitted them for the hardness of the people's hearts ; and what Moses did by the command of God, in whose name he gave his civil laws, it certainly would not be sinful in a human legislator to imitate. To the circumstances of his people, perhaps, it might not be suitable ; but against the charge of sinfulness, the example of Moses appears to shield him. Consequently, Christian legislators can incur no guilt, if, on civil grounds, and on account of hardness of heart, they grant divorces in other cases besides those in which the New Testament has declared them lawful ; for that, even among Christians, hardness of heart is to be found, no one will deny. No doubt, those persons who avail themselves of this liberty in cases beyond that of unchastity, specified by Christ, do sin ; but magistrates and legislators who grant it, do not sin ; for their object is not, and indeed should not be, to restrain every thing morally evil, by the power of the secular arm. If, for instance, married persons can never agree, but live in a state of perpetual discord, and the magistrate, therefore, grant them a divorce, with liberty to enter into a second marriage,

though they both by their quarrels and their separation incur guilt, the magistrate has only done what Moses did at the command of God, and has therefore as little sinned as God himself can sin.

I again repeat, therefore, that I do not censure our common marriage-laws for being just as strict as the moral doctrine of Christ; but only that I would not have this strictness considered as a duty imposed upon us by the Christian religion. In a political view I regard it as useful, because the frequency of divorce becomes in process of time a great evil. For what can a divorced wife do? Shall she venture on a second marriage? This privilege, indeed, natural equity seems to demand for her. But then she goes from one hand to another, and, according to an argument already used, and the force of which experience but too strongly confirms, the second husband will scarcely be secure from the machinations of the first against his life, if the latter shall conceive any inclination to renew his intimacy with her. Among a rash and sensual people this will always be carried farther and farther, until at last marriages become what *Tacitus* and *Suetonius* represent them to have been in their times at Rome, almost *a concubitus promiscuus*. There is still another evil consequent on the frequency of divorce, namely, that it is then no longer disgraceful for a wife to be divorced; and when that comes to be the case, a wife, though she has no right to divorce herself, will soon find means by her ill behaviour, to force her husband to divorce her, when her fancy happens to be set upon another man. This is the ruin of good and virtuous marriages; and where these

cease, the generality of people will no longer have any inclination to marry at all, but will gratify their desires in another way : and the immediate consequences of this are, paucity of marriages, (as was the case at Rome,) depopulation of the country, and at last slavery, and submission to the yoke of a conqueror. I therefore approve of our Christian marriage-law, excepting in some points immediately to be mentioned ; and would most earnestly dissuade a legislator, whose people are happily accustomed to rarity of divorces, from making them more frequent, or granting them on frivolous grounds ; but I would not have this considered as a precept of the gospel, nor its divine author as a civil legislator.

Our Christian marriage-law, however, commonly goes a step farther in point of rigour, than the doctrine of Christ warrants ; and this is what I cannot approve. According to Christ's doctrine, the husband who gives his wife a bill of divorce for unchastity, does not sin. Every thing here rests with his own conscience, nor has he any occasion to bring forward a legal proof of his wife's criminality. Yet such a proof, difficult as the nature of the case renders it, our marriage-law commonly requires ; and the husband, if he cannot produce it, is compelled, contrary to the essential design of the married state, to keep, till death part them, the wife of whose infidelity he is perfectly convinced, and whom the terms of Christ's doctrine would have authorized him to divorce. Is this right ? Do not the laws require alteration in this point ?

Those whose province it is to deliver theological

opinions, in answer to consultations on the subject of divorce, are sometimes reduced to such pressing difficulties between preconceived maxims, and the manifest demands of equity, that they are under the necessity of looking upon things perfectly opposite, as the same. I remember an instance where, from a country in which adultery is punished with death, there came to a certain theological faculty the following question for their discussion, viz. "Whether a man might be divorced from a wife whom, after various suspicious scenes, he at last caught in bed with another man?" The adultery was not judicially proved; for as the matter was criminal in the highest degree, and involved capital punishment, something more than even the high probability just mentioned, was requisite to such a legal proof as could justify condemnation to death, viz. either the confession of the parties themselves, or witnesses who could testify positively as to the fact, and had actually seen *rem in re*. But both parties had forgotten to call such witnesses, while in bed together. The Consistory who proposed the question, stated this circumstance, and that the woman could not be pronounced guilty of the adultery, because no witness had seen the crime completed. But was the husband to suffer on this account, and be obliged to keep his wife, because her head could not be cut off? The theological faculty felt the justice of this appeal, and, much to their praise, pronounced *for* a divorce. But then, instead of founding their opinion on the circumstance of Christ's requiring no judicial proof of the adultery, but leaving divorce in the case of unchastity entirely to the conscience and discretion of

the husband, (and certainly, considering the circumstances, no reasonable man could here believe any thing else than that his wife was unchaste) they made this the ground of their decision, "that Moses permitted a divorce, when the husband found any *Ervath dabar* in his wife; that *Ervath dabar* meant any thing shameful; that to be naked in bed with another man was a shameful deed; and that therefore the divorce should be permitted." Now this opinion confounded things perfectly opposite. The Consistory who proposed the question, founded upon the doctrine of Christ, and wished to know whether the divorce was permitted thereby: but the theological faculty, being in a dilemma between prejudices and justice, answered from the civil law of Moses; of which Christ expressly says, that on account of the hardheartedness of the Israelites it permitted divorce in cases wherein *his* principles and doctrine prohibited it, and even those of Moses himself obliged him to condemn it. At the same time they, in their answer, resorted to a principle, the validity of which they would not (as far as I know them) have admitted on another occasion. For if it be true that every shameful deed in a wife is sufficient ground for divorce, then, since lying is a shameful thing, she might get her leave for any lie which she happened to tell; and if so, but few marriages could subsist, or else we should be under the necessity of introducing into the mode of educating daughters on the subject of untruths, practices somewhat different from those which have been hitherto generally adopted.

II. Once more : When Sir John Pringle, physician in ordinary to the queen, some years ago visited Göttingen, he once asked me, whether in Matth. v. 32. instead of *πορνείας*, we might not read *πονηρίας*, (*for wickedness*) because in the version of the LXX., the two words were sometimes confounded by transcribers. This critical conjecture, which was certainly a very shrewd one, would, if confirmed, give us quite a new ecclesiastical law, and authorize divorce, even on conscientious grounds, on account of determined wickedness, perverseness, and bad habits in a wife. I cannot, however, accede to it, for the following reasons, of which the two first seemed quite satisfactory to Sir John Pringle.

1. The word *πορνεία* occurs *twice* in the prohibitions on the subject, viz. in Matth. v. 32. and xix. 9. Now it is scarcely possible that the very same mistake in transcription should have taken place in both passages, and should besides be so universal, that no *Codex* nor *version* should have preserved the true reading.

2. Matthew wrote in Hebrew, in which language, *πορνεία* and *πονηρία*, although very similar in Greek, have not the least resemblance ; and yet there is not the smallest trace to be found of any thing like *πονηρία* having stood in the Hebrew. At least Jerom, who had read and translated Matthew's Gospel, says nothing of it in his Commentary.

3. As the controversy between the two schools of Hillel and Shammai, whether divorce should be permitted only on account of unchastity, or for other causes likewise, took place just at the time of Christ's appearance, *πορνεία* is the more suitable of the two to

the circumstances of that period, and would, in that view, merit the preference, even if any variety of lection were found, which is not the case.

ART. CXXI.

Provision for the Wife after her Husband's Death.

§ 4. THE support of the wife after her husband's death was uniformly provided for, without the aid of any special regulations. If she had children, that natural duty, which no statute needs to name, obliged them to maintain her. If she had not, the nearest relation of her deceased husband was obliged to marry her, or, if he declined so doing, to resign her to the next more remote; and *that* so peremptorily that, as we see from Ruth iv. 5., he could not inherit the land of the deceased, without taking his childless widow along with it. If she was too old for marriage, still it would seem to have been an incumbent duty on the heir of the land to support her just as fully as if she was his wife.

Among the Arabs, who in general have no land, it is otherwise. In the marriage-contract, they settle something certain on the wife; but that was not necessary according to the Hebrew arrangement.

CHAPTER IX.

LAWS RESPECTING SLAVES AND SERVANTS.

ART. CXXII.

*Moses permitted Slavery, which was already in use ;
but he did so, under particular Limitations.*

§ 1. MOSES found slavery introduced long before his time, both among the Israelites and the neighbouring nations. Abraham, Isaac, and Jacob, had had slaves ; and the Canaanites, Egyptians, and Arabians, had them also.

Whether it be better to have slavery or not, is a tedious and difficult question, in the philosophy of legislative policy, on which, no one will desire a decision from me, because I am a German, and a native of a country in which no example of slavery is to be seen. In a question of such moment, theoretical and partial inquiries are insufficient : and the man who undertakes to answer it, would require to have practical knowledge of the subject, and to be acquainted with the advantages and evils of slavery, from long experience, aided by patient reflection. For that it has both its advantages and its evils is unquestionable.

That it is a hard situation to be slave, no one will deny ; and wherever slavery subsists, it is a hardship

that falls to the lot of thousands. In every state too, wherein the number of slaves is very great, there must be reckoned the very same number of unarmed subjects, who, while they contribute nothing to its defence, because they cannot be intrusted with arms, must nevertheless be maintained; and there is yet this further danger, that the slaves, sensible at last, of their strength as well as their hardships, may seize upon arms, and become masters of the country. The histories of Rome, and of other nations, record examples of *Bella Servilia*, for which, thank God, we have no equivalent term in German; although, indeed, our word *Baurenkrieg*, (war of the peasantry) approaches pretty nearly to the idea conveyed by the latter expression. On the other hand, where there are no slaves, many crimes, which might otherwise be more advantageously, and perhaps more effectually, and at the same time, also, more mildly punished by condemnation to slavery, must be made capital offences; such, for instance, as theft, and probably, (as is indeed the case here, in Hanover, although the law is never put in execution,) wilful bankruptcy. Nor is there any proper means of preventing the idleness of beggars; for work-houses, which after all, form almost a species of slavery, cost the public more than they bring in. Nor again, can the settlement of debts be in any way so summarily and securely effected, as when the creditor has it in his power to sell the debtor for a slave.

Against the *rigours* of slavery, there is this security, that the master will, in general, be as careful of his slave as of his horse, because it is his interest, that the life and health of his slave be preserved, and that

he beget children: whereas, nobody gives himself such concern about a day-labourer, or hireling, from self-interest, but only from motives of compassion, which is not so universal, nor, in most cases, even so active and liberal as self-interest. Many slaves, therefore, are really in a much better condition, than if they enjoyed freedom, especially when they have a kind master, and sometimes, even when though rigorous, he is withal a man of prudence. To strike a balance then, between the advantages and disadvantages of slavery, is a difficult matter; but upon the whole, when I consider the severity of our numerous capital condemnations for theft, and our insecurity after all, against its artifices—when I consider that the banishment of our culprits only serves to make them a burden to our neighbours, who in return, land theirs upon *us*; and that it thus becomes a sort of nursery for robbers, or at any rate, for vagabonds and beggars, who are the pest of every country; I am often led to think, that the establishment of slavery, under certain limitations, would prove a profitable plan.

But of this enough. Moses, as we have said, permitted slavery, but under restrictions, by which, its rigours were remarkably mitigated, and particularly in the case of Israelitish citizens becoming subjected to it. This is, as it were, the spirit of his laws respecting it. As a hardship, he appears to have regarded it, and its rigours, in his heart, to have disapproved: and how, indeed, could it be otherwise, considering that the people, whose liberties he vindicated, and to whom he gave laws, had themselves been slaves in Egypt, and felt all the miseries of that un-

natural state? Hence we find him in Deut. xxiii. 16., ordaining, that no foreign servant, who sought for refuge among the Israelites, should be delivered up to his master. If we think this strange, and incompatible with justice, let us remember, that we ourselves act precisely in the same manner, when a deserter comes over to us, if we have no cartel established with the prince from whose service he has fled; besides that he has broken his oath, which the runaway slave has not. But I am not to enter farther into the discussion of the repugnancy to justice, in the two cases now stated: because the question, “whether to foreigners, who contribute nothing to the expences of its administration, we are absolutely bound to act upon the principles of justice, or should allow ourselves to be guided merely by neighbourly courtesy, and an expectation of the like return,” does not belong to the subject of slavery, in which I am now engaged.

ART. CXXIII.

Of the different ways in which people acquired, or became Slaves.

§ 2. THE ways in which, according to the Mosaic statutes, and the consuetudinary law of the Hebrews, slavery might take place, or servants be acquired, were *three*, or including subdivisions, (which are not worth contesting as a mere point of enumeration) *five*.

1. War; whence, probably, slavery had its first origin.

Here, however, between the procedure of the Hebrews, and that of occidental nations, who made slaves in war, there is this distinction to be noted, that according to the rigorous war-law of the former, and their neighbours, a captive enemy, who had borne arms, could entertain but little hope of having his life spared, and becoming only a slave; that being, in general, the lot of only the women and children; Deut. xx. 14.—xxi. 10, 11. Sometimes in the case of a war of revenge, the law was still more severe: for in that carried on against the Midianites, male children, and women who had known man, were put to death, and the virgins only spared and carried away into slavery; Num. xxxi. 11. 14.—18. 35. They were not, however, except in their wars with the Canaanites, prohibited from the exercise of greater clemency towards their enemies; and very probably self-interest or compassion often moved them to spare the lives of those taken even in arms, *where they could do so with safety*. My addition of this last clause is not superfluous: for considering the malicious spirit which the patriotism of most ancient nations manifested towards strangers, and that revengful temper of mind, which seems to be so natural and operates with such violence in southern countries, that they have scarcely any idea of honour unconnected with the exercise of revenge, it certainly could not be *always safe* to spare the lives of the vanquished, and keep them as slaves in their families.

2. Purchase, of which there were several sorts.

(1.) A servant might be sold by his master to another person: and probably it was in this way that an

Israelite who had sold himself to a foreigner, was sometimes redeemed by his nearest kinsman; Levit. xxv. 47.—50. But not to dwell on this, the purchase of servants was so common, that the phrase *מִקְנַת כֶּסֶף*, (*Mikenath cheseph*,) *bought with silver*, almost became the common term for a servant, particularly, when he was to be distinguished from that superior class of servants who were born in the family; Gen. xvii. 13. In this case, however, the purchase does not properly come to be classed with the modes in which slavery might take place, but merely with those, in which slaves were acquired: and it was indeed nothing more than a mere *translatio dominii*, or transfer of property already possessed. It is probable, likewise, that the slaves acquired in war were publicly sold to the highest bidder, because they could not otherwise have been fairly divided. In the war with the Midianites, the 12,000 men who had made the campaign, received 15,968 virgins; the rest of the Israelites, in number almost six hundred thousand, 15,680; Eleazar the priest, 32; and the adult Levites, who amounted to more than eight thousand, 320. Here it was not possible to divide the spoil without an auction.

(2.) Any man that chose, might, if pressed with poverty, sell himself for a servant, and that not only to an Israelite, but even to a stranger, that lived among the Israelites. The purchase, therefore, of an Israelitish servant, was permitted to a foreigner; but with this restriction, that his nearest kinsman, or even any other relation, had the privilege of redeeming him, on deducting the years of his past service, and paying the value of those yet remaining, Lev. xxv. 39, 47,—52.

3. It appears also, that parents, not fathers only, but in certain cases mothers likewise, had it in their power to sell their children for slaves. Moses, it is true, gives no express ordinance on this point; but then he says nothing against it; and for my own part, I cannot understand the story in 2 Kings iii. 16.—28. if a mother had not a right of making gain by the sale of her child. A whore, who had overlaid her own child while asleep, steals from another, who slept with her, a child of the same age, pretends it is her own, and persists so obstinately in asserting her right to it, that the dispute, which was altogether novel and unprovided for by any law, is brought before the throne for decision. That a mother may, though a whore, love her own child, and be unwilling to be deprived of it, is easily conceivable; but why a whore should have any desire to appropriate a child, which she well knows is not her own, and so subject herself to the burden of its education, is utterly inconceivable, unless she could hope to make gain by it: but how could she hope for any advantage from the possession of an infant, if she had not a right to sell it?

This law has certainly the aspect of rigour: yet is it, perhaps, that precise part of the law of slavery, which, out of compassion for poor children, and as an expedient for promoting the increase of population, politicians should be preeminently desirous of re-introducing among ourselves. Parental love would indeed resort to it very rarely, except in cases of extreme necessity: but on the other hand, it would be the means of preserving thousands of children. The greater part of our illegitimate children perish, in consequence of the

poverty of their mothers, or from want of care. Foundling Hospitals are indeed a well meant, but a very inadequate preservative of neglected or deserted infants ; and sometimes, when their overseers, or the subordinate servants have no conscience, this remedy is worse than the evil it is intended to prevent. For in their earliest years, children, to be preserved, stand in need of something like parental superintendance ; but experience shews, that of the multitudes who enter foundling hospitals, only a very small proportion comes out ; by far the greater number dying for want of attention, because none of those that have the charge of them regard them with any attachment, or are, from any principle, even of self-interest, at all concerned in their welfare. But, on the other hand, if the unfortunate mother of a bastard child, when abandoned by her seducer or keeper to shame and misery, has it in her power to sell it, and its purchaser happens to be a good œconomist, who counts the multitude of his slaves as wealth, and prefers those bred in his own house from infancy, to such as are only bought when adults, because he can put confidence in their fidelity,—in all probability its life is saved : it will grow apace to strength, and besides, be reared up to habits of useful industry.

4. The person who had contracted debts which he could not pay, was by way of punishment sold for a servant, or by way of payment put into the hands of his creditor, as his slave. The same rule was observed in the case of theft, where the offender was not in a situation to make restitution for what he had stolen, according to the proportion required by the laws,

which was double the amount, and in some cases four or five times as much, Exod. xxii. 2. Nehem. v. 4, 5. Nor was it merely the person of the debtor alone that was thus at the mercy of the creditor, but his right extended to his wife and children besides; and in some cases we find the debtor himself consigning them to slavery in the first instance, in order that he might himself go free, 2 Kings iv. 1. Isa. l. i.

III. Slaves were acquired, by the issue of the marriages of slaves, or rather of that sort of cohabitation between them, which the Latins termed *Contubernia*; for in the Roman law, *that*, and not *Conjugia*, was the term applied to the marriages of slaves: and among the Hebrews likewise, we find a remarkable distinction made between their marriages and those of free citizens.

If a free-born Hebrew, who sold himself for a slave, had previously had a wife, this was in all respects a perfect marriage, and after his six years of servitude were expired, her freedom was restored along with her husband's, Exod. xxi. 3. But if during the continuance of his servitude, his master gave him a female slave as a companion, this was only a *contubernium*, and differed from a marriage in this essential circumstance, that she still continued in slavery after he recovered his freedom in the seventh year, and consequently the connection ceased, Exod. xxi. 4. The children produced from such a *contubernium* were also slaves; and, *a fortiore*, it is obvious that the children of other servants of foreign descent were born to slavery.

Such slaves by birth were said to be *born in the*

house, Gen. xiv. 14. xvii. 23.; and termed *sons of the house*, Gen. xv. 3. or *sons of the handmaid*, Exod. xxiii. 12. Psal. lxxxvi. 16. cxvi. 16. Abraham had 318 of them; and as servants, who had thus from their earliest years sucked in attachment to their master, were more deserving of confidence than strangers, he put arms into their hands, and trained them to the use of them. It is needless to add that he must have treated them with kindness.

There was no doubt still another mode whereby slavery might take place, namely, man-stealing; but that practice is to be classed among crimes, and will be considered under that head. Moses makes it a capital offence, Exod. xxi. 16.

Of vows, which in some cases involved a sort of slavery, I shall also speak in the sequel. Suffice it at present to have merely mentioned them.

ART. CXXIV.

Two Laws relative to the Value of Slaves.

§ 3. WHERE slaves are a commodity that admits of purchase and sale, we may naturally expect to find something relative to their value stated in the laws. No doubt it is impossible to fix the price at which they are to be bought and sold; for that must vary so much according to particular circumstances, such as age, beauty, strength, abilities, fidelity, and other good or bad qualities, that no legislator can be capable of appreciating them by any precise rate; and the more that luxury increases among a people who toler-

ate slavery, and leads them to mark with a sort of *amateurship* certain fanciful qualities in slaves, on which fashion has once set a high value, the more variable will be their prices. They will besides rise and fall in value, in proportion as money is scarce or plentiful in the country, and more or fewer of them come into the market. During a successful war, when they are made captives by thousands, or perhaps hundreds of thousands, their price must sink very low; and on the other hand, during an unsuccessful war, and in a time of long peace, they will become scarce and dear. Moses, therefore, has nowhere made the vain attempt of fixing the precise rate at which they were to be bought or sold. But in *two* cases, he found it expedient to put a statutory estimate upon them, and *that* according to a certain medium price, without regard to any of those accessory circumstances that might heighten or lower their value.

1. If a pushing ox, whose owner, though warned, did not confine him, gored to death a male or female slave, the owner was obliged to pay their value to their master. In this case, there could be no previous settlement of the point; and the process would become very intricate indeed, were all the qualities of the slave, both good and bad, necessarily brought into the calculation. The lawgiver, therefore, fixed on a medium rate, and, without regard to age or sex, estimated all slaves indiscriminately, at 30 shekels, that is, as I reckon the shekel, at 7, or, according to others, at 30 *guldens* of our money, of which four make a ducat. See Exod. xxi. 32.

6. But in the case of a person devoted to God by

vow, Moses made a more accurate and particular appreciation. By any such vow, such a person became a slave of the sanctuary, a *mancipium sacrum*. Moses, however, by no means wished even then to hold the obligation as absolutely indispensable, but permitted a release ; and that the rate thereof might not depend on the arbitrary determination of the priest, he fixed a rate beyond which the priest could make no demand, though he had it in his power to remit it in part, to persons in indigent circumstances, Lev. xxvii. 1,—8. In this matter, Moses attended only to age and sex, and was probably guided by the customary regulations of price, according to the traffic of the times ; but still in such a way, that we find him leaning to the side of clemency, and not too nicely discriminating between the period of life when the value becomes enhanced, and that which precedes it ; and as to other circumstances which are wont to raise the price of slaves, he does not seem to have so much as thought of them. This ancient appreciation, which is truly deserving of our notice, as founded on the *rules of mortality*, and on the usefulness of slaves for service, I shall here annex, and endeavour to illustrate.

(1.) On a child less than a month old, he put no appreciation : it was valued at nothing. Human life at that period is so extremely uncertain, that an infant of that age appears to be worth nothing beyond the expense of nurture, stated to the account of profit and loss.

(2.) From a month old, to the end of the fifth year, the value of a boy was five, and of a girl three, shekels. During this period, the mortality of the

human race is still very great. According to *Süssmilch's* Tables, (in his *Göttliche Ordnung*, ii. 319.) of 1000 children born, about 584 reach the sixth year, and 416 die in the first five years. This is nearly an equal proportion; and besides, during the first five years, we can draw no profit from our children, and have only the expense of rearing them to bear.—But from this age, their value advances, because while the risks of mortality and the expenses of nurture lessen, their usefulness for service commences with the sixth year, particularly in the country, by their capacity for tending cattle.

(3.) From the fifth to the twentieth year, a boy was worth 20, and a girl 10 shekels.

We may wonder why these 15 years are all included under the same valuation, considering that the rules of both mortality and usefulness would, during this period, seem to fix a very different estimate. For from the age of 9, and still more, of 12 to 30, but very few die; and when a man attains his 16th year, he begins to be at his best for bodily labour. Is it not strange then, to put the same value on a child of six, and a youth of 18?

The solution of this difficulty is probably to be found in the preeminent value attached to servants bred up in the house of their master, and of course inspired with sentiments of love and fidelity towards him from their infancy. Children of six years old, we may almost consider as on the same footing in this respect with servants born in the family; but from the 10th or 12th year, the probability of these sentiments becoming natural to them, diminishes much

in the same proportion in which their usefulness for service, and their chance of life, increases; and yet they are not arrived at that perfect manhood, in point of either their corporeal or mental powers, which they will afterwards attain.—As to females, this valuation considers them merely as slaves, and not as concubines, else could not a woman of 18, be estimated at the same rate as a girl of six, and of course at thrice as little in proportion as a child of five. Finally, it proceeds from clemency in the legislator, that both sexes from their 18th year, are not rated higher, and placed on a footing with the next, or fourth class. I should suppose that in buying and selling, a servant of 18 years of age, would generally have borne a higher price than one of 14, or of 10.

(4.) From the age of 20 to 60, that is, during the years of their greatest use, and when the probability is that they will live at least six years, which was the duration of a Hebrew servant's service, Moses valued males at 50, and females at 30 shekels.

(5.) When the age exceeded 60, the value of a man-servant fell again to 15, and of a woman to 10 shekels.

It is observable that throughout this whole appreciation, the other sex is uniformly rated lower than ours; whereas by the former law relative to slaves gored by a pushing ox, both sexes were valued alike. The reason of this seems to be, that females are here, as I have already remarked, considered not as concubines, but merely as servants; for it is quite obvious, that if a woman by a vow devoted herself to God, or was so devoted by her parents, it was not in either

case meant that she should become a concubine to the priest.

ART. CXXV.

Mancipia publica et sacra.

§ 4. Not only could private individuals have slaves, but also the public at large, that is, the sanctuary; and such slaves of the sanctuary, both male and female, were, at the pleasure of the priests or Levites, employed in all manner of menial labours, such as hewing of wood, and bearing of water, though sometimes also in more respectable situations.

Of this description of slaves, we find traces before the Mosaic law. In the statute of Lev. xxvii. 1,—8. which I have already explained, Moses presupposes that a person might by vow make himself a slave to God, that is, to the sanctuary; and although this law gives him the liberty of purchasing a release, yet the immediate effect of the vow, which only became cancelled by that purchase, was his subjection to a sort of slavery. It is quite manifest from the strain of this law, that such vows and such slaves must have been well known before the time of Moses; for he is so far from introducing such vows, that he only modifies their obligations, taking it withal for granted, that they would still be made. If the Israelites, while slaves to the Pharaohs, had not themselves had it in their power to make vows of this nature, they might still have seen examples of them among other nations.

Of the 32,000 Midianitish virgins, the priest received

32, and the Levites 320, Lev. xxxi. 40, 47. If they kept, and did not sell them, these virgins became of course handmaids to the sanctuary.

When the Israelites under Joshua invaded Palestine, and the Gibeonites by a stratagem effected a compact with them, after the discovery of the trick they were consigned to the service of the sanctuary for ever, as *hewers of wood and drawers of water*, Josh. ix. 27. They were termed נְתִינִים, (*Nethinim*) that is, *presented as gifts*, because they were given to the priest; and their posterity, in the later periods of the history, appear under the name of *Nethinims*, 1 Chron. ix. 2. Ezra viii. 17, 20. A more particular account of whom is not to be expected here, as it belongs to the subject of Jewish antiquities.

Samuel himself was devoted from his mother's womb to the service of God, 1 Sam. i. 11. The high-priest, who conceived an affection for him, made him his servant, and in process of time he arose to the dignity of a judge.

ART. CXXVI.

Of the Property which the Hebrew Servant might possess—the Right which his Master had to beat him—its Limitations—and the Manumission of Servants.

§ 5. SERVANTS among the Hebrews might have property of their own. Although a person had devoted himself to God, so far were his effects from falling thereby to the sanctuary, that he could at any time apply any part of them to the purchase of his

release. In Lev. xxv. 49. it is considered as a possible case, that a servant, even during his servitude, might acquire what would serve to purchase his freedom. The Romans made a distinction between the property and the *peculium* of servants ; but among the Hebrews, I find no trace of any such distinction.

From 2 Sam. ix. 10. we plainly perceive, that a man who was himself a slave, might have other slaves belonging to him in his turn ; for Ziba had twenty such.

Moses allows the master the right of beating his slaves ; and indeed without such a right, slavery could scarcely subsist. He even goes so far as to ordain, that although the slave died in consequence of the blows, if it was not under the master's hand, but two days after, the master suffered no punishment ; for, considering that the slave was worth money to him, it was not to be supposed that he would, without great provocation, so far exceed moderation in discipline, as that his death could ensue : to which add, that although he had a right to beat him, and although it is always difficult, when we punish in a passion, to keep within the due bounds of correction, yet the danger of a stroke does not merely depend on the person who gives it, but also upon him who receives it, and who by studying to evade it, may so turn as to make it strike mortally. At the same time, the master, by any such excess of discipline, was punished by the loss of his slave. Moses expresses the reason of his clemency in such a case, with great brevity, in these words, *for he is his money*, Exod. xxi. 21.

On the other hand, the master had no right to kill

his slave, or to maim him. If he struck so as that he died under his hand, he was punished ; not, however, in my opinion, *capitally*, but as the magistrate thought proper, or as the circumstances of the case, which might be very different, required, Exod. xxi. 20.—The words of Moses are, *It shall be avenged*, and not, as where he denounces a capital punishment, *He shall die* ; and among the Arabs, as seems to be clear from the Koran, chap. ii. 173. a free-born person was not put to death for the murder of a slave.—See my Dissertation, *Ad leges divinas de poena Homicidii*, in Syntag. Comment. i. p. 52. where the reader will find Jewish explanations contrary to mine.

If the master by a stroke deprived his slave of an eye or a tooth, he obtained his freedom in recompence, Exod. xxi. 26, 27. ; and this law seems to have held also in the case of his losing any bodily member whatever : the eye and the tooth serving only by way of example. Moses very frequently delivers general laws in the form of particular examples ; and by here specifying the noblest of our organs on the one hand, and on the other, one of those organs that can be most easily dispensed with, and are naturally lost on the coming of old age, he plainly gives us to understand, that all the other organs of intermediate dignity, are to be considered as included.

In what cases the master was bound to give liberty to the female slave, who had served either himself or his son as a concubine, has been already considered under Art. LXXXVII. and LXXXVIII.

I must here, by the way, make some remarks on the Hebrew word expressive of manumission, and the epi-

thet applied to the manumitted. Moses terms the latter חפשי (*Chophschi*) that is, the unclean; and giving liberty to a slave, he calls *dismissing him as a Chophschi*; probably from this circumstance, that when their slaves had the leprosy, they wished to get them out of the house, and give them their freedom; for the insulated habitation to which lepers were banished is called, in 2 Kings xv. 5. בית חפשיית (*Beth Chophschith*) the house of uncleanness. But perhaps likewise an *unclean person* is here equivalent to a *dead person*; for dead bodies occasioned a levitical defilement; and in Psal. lxxxviii. 6. we find the word actually applied to the dead; for the meaning of the Psalmist's expression, במתים חפשי, is *as completely and irrevocably free, as if dead*. That the forensic terms of the Hebrews are often attended with etymological obscurity, we have, it will be recollected, had frequent occasion to remark. In the present instance we can arrive at a pretty clear explanation.

Concerning the condition of slaves among the Hebrews, which was not barely tolerable, but often extremely comfortable; and concerning the distinctions between servants, of whom, to avail myself of the Roman term, some were *lautiores*, than others, and had charge of the whole household, &c. &c. I do not here treat, because these things depended on the pleasure of their masters; and the consideration of them does not properly belong to the Mosaic law, but to the Hebrew antiquities.

ART. CXXVII.

Of the Privileges of the Hebrew Servant, and his Manumission in the Seventh Year.

§ 6. MOSES makes a great distinction between a servant of foreign birth, and a Hebrew servant. The latter could be made to serve for six years only; and in the seventh received his freedom. The statutes on this subject are found in Exod. xxi. 2—11. Lev. xxv. 39—55. Deut. xv. 12—18. They were, perhaps, founded on consuetudinary law; for, in the history of Jacob, we find an instance of a seven years servitude, which he twice underwent, Gen. xxix. 15—27. But without dwelling upon their dubious origin, I proceed to illustrate the laws themselves.

A stranger, then, might be bought for a servant for ever, Lev. xxv. 45, 46; but not so an Hebrew. It is not, however, quite certain, what is here meant by an Hebrew? whether an Israelite only? or any descendant of Abraham whatever? or again, any person sprung from the same people with Abraham, even although he dwelt beyond the Euphrates? For I must here observe, in passing, that the word *Hebrew* עברי (*Ebri*) properly means *born, or living beyond the river*, that is, the Euphrates, עבר הנהר (*Eber Hanna-har*); and that in Isa. vii. 20. even the Assyrians themselves are called עברי הנהר. In Gen. xiv. 3. Abraham himself is styled אברם העברי, or *the Hebrew*, which the Seventy render ὁ περὸς ἑρως, that is, *born on the other side*; and the ancestor of Abraham in the

seventh generation, as is very common among the Orientals, bears the name of *Eber*, because the people beyond the river sprung from him; just as the Arabs are wont to denominate this very man, *Hud*, from the Jews, the most celebrated of his descendants. How then, is the word *Hebrew* to be understood in the Mosaic statute? Has Moses in his view the Israelites only, or the other nations connected with them also? This question is so doubtful, that my opinion wavers every time I renew my reflections upon it. Some years ago, when I was discussing the subject in my prelections on Hebrew Antiquities, I was inclined to take the word in its more extensive signification, and my reasons were the following:

1. Because *Hebrew* is not the distinguishing name of the Israelites, all the nations descended from Eber being so denominated.

2. Because before the days of Moses a servitude limited to a precise term of years was in use among the ancestors and relations of the patriarchs; and Jacob completed two such terms of service, each of seven years, with Laban his father-in-law, in Mesopotamia. By this ancient usage Moses seems to abide, in its whole extent, and to have used the term *Hebrew* in reference to it, without any limitation.

At present, however, my opinion leans strongly to the other side, and that for the following reason. Moses, in Lev. xxv. 44. allows the Israelites to have slaves for life from among the nations who dwell round about them; but these nations were mostly descendants of Abraham, or his nephew Lot; the Ishmaelites, for example, the Midianites, the Edomites, the Am-

monites, and the Moabites. Canaanitish slaves they were not, in ordinary cases, permitted to have; so that, to all appearance, the nations above named could scarcely be excepted by Moses, in his permission to enslave for life persons from the neighbouring countries.

Moses specifies two periods, at which the Hebrew servant was to regain his freedom; the *seventh* year, Exod. xxi. and Deut. xv; and the *fifteenth*, or year of jubilee, Lev. xxv. How these periods are reconcilable with each other, considering that the year of jubilee must always have immediately followed a sabbatical year, and that of course the servants must have been already free, before its arrival, deserves inquiry.

Here then all depends upon the sense in which Moses understands *the seventh year*; whether as the sabbatical year, in which the land lay fallow, or as the seventh year from the time when the servant was bought? Maimonides was of the latter opinion, and to me also it appears the more probable. For Moses uniformly calls it *the seventh* year, without using the term *sabbatical* year. What then is more natural than to understand the seventh year of servitude? And besides, when he describes the sabbatical year in Lev. xxv. 1—7. we find not a word of the manumission of servants. The apparent inconsistency of the two laws thus ceases. The servant was regularly restored to freedom after *six* years service; but supposing him bought in the forty-sixth year of the Jewish calculation, that is *four* years before the jubilee, he did not, in that case, wait seven years, but received his freedom in the year of jubilee, and with it the land he might

have sold. In this way Moses took care that too great a proportion of the people should not be slaves at one time, and thus the state, instead of free citizens to defend it with arms in their hands, have only the protection of a number of unarmed servants.

There might still be other cases in which a slave only recovered his freedom in the fiftieth year. For instance, if a man was sold for debt, or for theft, and the sum which he had to pay exceeded what a servant sold for six years was worth, it is certainly conformable to reason that the said debtor or thief should have been sold for a longer period, at least for twice six years: but still, in that case, his servitude would cease on the coming of the jubilee, when every thing reverted to its former state.

It has been generally supposed, that those servants who did not choose to accept their freedom in the seventh year, and of whom I shall immediately speak, became free at the year of jubilee. Here, however, a doubt has occurred to me, whether any such servant could, after he had become so much older, have ventured to accept freedom in the fiftieth year; and whether he would not rather wish and expect, that the master to whose service he had, from attachment, generously sacrificed his best days, should keep and maintain him in his old age? At the same time, it occurs to me to observe, on the other hand, that in the fiftieth year every Israelite received the land he had sold: so that the servant, who before refused his freedom, because he had nothing to live on, might now accept it with joy, when his paternal inheritance returned to him quite unincumbered.

Moses, as I have just remarked by the way, presupposes it a possible and probable case, that a servant, who had a good master, might wish to remain with him constantly during life, without seeking to be free; particularly if he had lived in *contubernio* with one of his master's female slaves, and had children by her, from whom, as well as from himself, he must separate, if he left his master's house. In such a case, he permits the servant to bind himself for ever to the service of the master, with whose disposition he had by six years experience become acquainted. But, in order to guard against all abuse of this permission, it was necessary that the transaction should be gone about judicially, and that the magistrate should know of it. The servant was therefore brought before the magistrate, and had his ear bored at his master's door. It does not belong to my present subject, but to that of Hebrew antiquities, to enter into a particular illustration of this custom, which, in Asia, where men generally wear ear-rings, was not uncommon, and was, besides, among the other Asiatic nations a mark of slavery; and, therefore, I here merely remark, that it was the intention of Moses, that every Hebrew who wished to continue a servant for life, should, with the magistrate's previous knowledge, bear a given token thereof in his own body. He thus guarded against the risk of a master having it in his power either to pretend that his servant had promised to serve him during life, when he had not; or, by ill usage, during the period that he had him in his service, to extort any such promise from him. I may farther observe, *en passant*, that the statute of Moses made boring the ears in some

degree ignominious to a free man ; because it became the sign whereby a perpetual slave was to be known. And if the Israelites had, for this reason, abandoned the practice, Moses would not have been displeased. Indeed, this was probably the very object which he had it in view to get imperceptibly effected by his law ; for in the wearing of ear-rings, superstition was deeply concerned. They were very frequently consecrated to some of the gods, and were thus considered as amulets to prevent the sounds of enchantment from entering the ear and proving hurtful.

If, however, the servant was willing to accept his freedom, not only was it necessarily granted him, but Moses besides ordained in one of his latter laws, as an additional benefit, that the master, instead of sending him empty away, should make him a present of sheep, fruits, oil, and wine, to enable him to begin house-keeping anew, Deut. xv. 13—15. On this occasion he observes, that such a servant does his master twice as much service as a servant hired by the day ; which I thus understand. If a man bought a servant for six years, he only paid half as much as a hireling would in that period have received besides his maintenance ; because the purchase money was necessarily paid down on the spot, and the purchaser had to run the risque of his servant dying before the term of his service was expired. But when this risk was past, and the servant had actually earned him his daily hire, his master was bound, in recompense of the advantages he thus brought him, to grant him some little gratification. At the same time Moses reminds the Israelites that their forefathers had all been slaves in Egypt, and

that therefore it was their duty to act with kindness towards those of their brethren, whose fate it was to feel the hardships of bondage.

At the conclusion of his first statute relating to the manumission of the Hebrew servant in the seventh year, Moses says, *If a man sell his daughter as a slave, she shall not go free, like a man servant*, Exod. xxi. 7 ; and at the conclusion of the second, *Even so shalt thou do to thy maid servant also*. Some expositors have given themselves a great deal of unnecessary trouble to remove this contradiction, and so to explain both laws as to make them both speak the same language. Did they forget, that a legislator may, in the course of time, find it expedient to make some alterations in his laws, and after 40 years to add something to an ordinance of that standing? (see Art. IX.) Thus seems Moses to have acted in this instance ; he did not patronize slavery ; at least he endeavoured to mitigate its evils to native Hebrews, and to confine it within certain limits of duration. On their departure from Egypt, he did so with respect to males, and availing himself of an ancient and merciful usage, which terminated servitude after seven years, he introduced it by a written statute, as an incontrovertible right. After the people had become accustomed to this piece of clemency, he went a step farther in the law which he gave forty years after, and established the very same ordinance in behalf of females. This much at least is certain, that in the time of the prophet Jeremiah it was conceived that the statute, which gave freedom to the Hebrew slaves in the seventh year, extended not only

to the male, but to the female sex also, Jer. xxxiv. 9, 10, 11. 16.

Moses, moreover, prohibits masters from domineering cruelly over Hebrew servants, even although these masters were strangers resident in the land, to whom a Hebrew might happen to have sold himself; Lev. xxv. 39, 40. 43. 45. In general, he was not by selling himself to lose the rights of a citizen altogether, but, though for some years, he thereby became a slave, he was still to be treated rather as a hired servant, ver. 40. How far these restrictions of a master's power extended, is not accurately ascertained. Perhaps on this point the law savoured more of admonition than positive injunction; because, unless severity be carried to a certain pitch of excess, the magistrate can scarcely notice it, or determine the precise limits between necessary strictness and improper severity, without interfering more minutely than is expedient in family affairs.

The more to render the privileges of Hebrew servants sacred and inviolable, God declared that he regarded the Israelites whom he had delivered from Egyptian bondage as his own servants, and therefore did not wish that they should ever sell themselves to any person as perpetual slaves, Lev. xxv. 42.

Yet after all these precautions, this salutary law was not kept; but, on the contrary, after the lapse of some time, it became, for what reason I know not, altogether obsolete. This we see from the xxxivth chapter of Jeremiah, ver. 8. and downwards. In the last war with the Babylonians, which ended in the conquest of Jerusalem, and the utter ruin of the

Jewish state, king Zedekiah did what was then commonly done, when the situation of affairs in a country became desperate. He compelled his subjects to give all slaves of Israelitish descent their freedom. He probably meant to put arms into their hands, that they might assist in defence of the kingdom. To secure them still more fully in their liberties, their masters were, according to the Hebrew custom, compelled to swear that they were willing to manumit their Hebrew servants of both sexes; in token of which they passed between the parts of a divided victim. And thus, shortly before the destruction of the kingdom of Judah, the Mosaic statute began to be observed for a few days; but it was only for a few days: for the prophet informs us, that the masters very soon broke their oath, and forced their servants into bondage anew. So completely, therefore, was the statute gone out of use, that the command of the king, the oath of all their masters, and the extreme exigency of the state, when on the very eve of perdition, could not so much as enforce it longer than a day or two.

ART. CXXVIII.

Some other Statutes relating to Slaves—their Circumcision, &c.

§ 7. BEFORE I conclude this subject, I must mention some particular statutes relative to the circumcision of slaves, their sabbatical rest, and their share in the sacrifice-feasts at the high festivals.

Every servant, even of foreign descent, was by an

ancient law proceeding from the house of Abraham, obliged to submit to circumcision, Gen. xvii. 13. 27. This was properly no conversion to the revealed religion of the Israelites, because we read not a word of any instruction that was to precede or follow circumcision, but either a mere civil custom, or at most but a renunciation of the worship of other gods, which was at any rate prohibited under pain of death; and, therefore, if the term is to be at all applied to it, a conversion only to natural religion. I will not here repeat what I have already mentioned concerning the prohibition of idolatry, in Art. XXXII. and XXXIII; more especially as I shall have to enlarge upon it again, when I come to treat of the subject of crimes. We nowhere at least find any reason to think that a servant ever gave himself any concern about circumcision, or made any opposition to it, as a restraint on conscience. In fact, he could not even call it so, because the heathens did not think themselves bound in conscience, and with a view either to avoidance of future punishment, or the attainment of eternal happiness, to worship and sacrifice to all the gods: for indeed, they did not so much as know them all. Add to this, that no uncircumcised person could partake in those sacrificial feasts, which, as will be noticed immediately, were meant as a solace and recreation to servants; and probably it was owing to this privilege, that to foreign servants circumcision was not so irksome as we might otherwise suppose; especially when we consider that among many other great nations it was in general use, and had medical advantages ascribed to it.

In order to render the situation of slaves more to-

lerable, Moses made the three following decrees for their benefit.

1. On the sabbath day they were to be exempted from all manner of work. Of course every week they enjoyed one day of that rest which is so suitable to the nature of the human frame, and so requisite to the preservation of health and strength, Exod xx. 10. Deut. v. 14, 15. In the latter of these passages it is expressly mentioned, that one design of the sabbath was to give a day of rest to slaves, and the Israelites are reminded of their own servitude in Egypt, when they longed in vain for days of repose.

2. The fruits growing spontaneously during the sabbatical year, and declared the property of none, were destined by Moses for the slaves and the indigent.

3. The Israelites were wont, at their high festivals, to make feasts of their tithes, firstlings, and sacrifices; indeed almost all the great entertainments were offering-feasts. To these, by the statutes of Deut. xii. 17, 18. and xvi. 11. the slaves were to be invited. Such occasions were therefore a sort of *saturnalia* to them: and we cannot but extol the clemency and humanity of that law, which procured them twice or thrice a-year a few days enjoyment of those luxuries, which they would doubtless relish the more, the poorer their ordinary food might be.

Indeed the statute of Deut. xxv. 4. which prohibits muzzling the ox while threshing the corn, seems likewise to have been made for the benefit of servants, as I shall endeavour to shew in the next Article but one, after I have premised some necessary observations on the laws respecting day-labourers.

ART. CXXIX.

Concerning Day-Labourers for Hire.

§ 8. MOSES has left but one or two injunctions respecting the treatment of persons of this description.

1. They were, as well as the slaves, to share in the rest of the seventh day, and in the spontaneous produce of the sabbatical year, Lev. xxv. 6.

2. Their hire was to be paid every day before sunset, Lev. xix. 13. Deut. xxiv. 14, 15.

What that hire was to be, he does not determine; nor will this ever be attempted by any rational legislator, who means to enact not police-regulations for a single year, but laws to descend in force to future ages, because the price of things cannot long remain uniform. In the time of Christ, as we may very warrantably infer from Matth. xx. 2. the usual wages of a day-labourer was a *denarius*, that is, about one-fourth of a *guilder* of our Hanoverian money, or to use a standard more generally known, one-sixteenth of a Dutch *ducat*. But we shall be much mistaken indeed, if we imagine that this had been the rate of wages in the time of Moses, when the price of every thing was so low. We have, nevertheless, a Jewish story on record, in which this mistake appears in a very ludicrous manner. It occurs in *Belschit Rabba*, and is as follows:

The Egyptians sued the Jews for the gold and silver vessels carried off by their ancestors at their departure from Egypt, and insisted on their making res-

titution. One should suppose that the Jews would have pled the law of prescription. But they did no such thing. They readily admitted the claim, and offered restitution; but only they, at the same time, preferred a counter-claim in their turn. For 210 years, said they, we were in Egypt, to the number of 600,000 men. We therefore demand day's-wages for that period, at the rate of a *denarius* for each man; and our account stands thus:

$$365 \times 210 = 76,650 \text{ days}$$

$$600,000 \text{ men.}$$

45,990,000,000 *denarii*.

(that is, of our money, 2,874 millions of ducats.) On this, the Egyptians began to wax warm, and dropt their suit.

The statute to be considered in the following Article, seems, as I have already hinted, to have been given in favour of day-labourers, as servants.

ART. CXXX.

The Ox, when threshing, not to be muzzled—a statute which, besides its literal meaning, implied also, that Servants employed in the preparation of Victuals and Drink, were not to be prohibited from tasting them.

§ 2. THIS statute, which has been seldom sufficiently understood, establishes, in the first place, certain rights, as belonging even to the beasts which man uses for the purpose of labour. It occurs in Deut. xxv. 4. in these words, *Thou shalt not muzzle the ox,*

while he thresheth. We must not here think of our mode of threshing, but on that used in the East, where the corn being laid on the threshing-floor is trodden out by oxen or asses, or by threshing-waggons and threshing-planks drawn over it by oxen. If the reader has not thus a distinct idea of the process, he may consult *Paulsen's* (*Nachrichten vom Ackerbau, &c.*) *Accounts of Oriental Husbandry, from Travels*, § 40,—42.—Here then, Moses commands that no muzzle be put on the ox, but that he be allowed, as long as he is employed in threshing, to eat both of the grain and straw. It appears that an ancient consuetudinary usage which Moses adopted in his written law, had established this as nothing more than equitable; for we find it still observed in places of the East, where the Mosaic law is not in force; as, for instance, according to Dr. *Russel's* testimony, at Aleppo, among the Arabs that dwell in that neighbourhood; and likewise, even among the inhabitants of the coast of Malabar. *Russel*, in his *Natural History of Aleppo*, p. 50. says, that there beef is pretty good at all seasons, but particularly excellent in summer, because, to this day, the inhabitants sacredly adhere to the ancient custom of allowing the ox, while threshing, to eat as much as he chuses. In the (*Malabarische Berichte*, or) *Periodical Accounts of the Malabar mission*, No. 29. p. 429. we are told that they have a proverb to this effect, *What an ox threshes, is his profit.* The people of the most ancient ages, in general, gave the ox a high preference above other beasts, on account of his great and indispensable usefulness in agriculture, and conferred upon him, as man's assistant,

many privileges, insomuch that Mythology speaks of a time when it was unlawful to kill him. I believe, however, that the statute before us, does not extend to oxen only, but includes also other beasts employed by man in threshing ; for Moses is wont to represent general principles, by particular and well known examples. This point, however, is too inconsiderable to occupy more room in its illustration, else might I quote Isa. xxx. 24. in proof that the ass had the same right as the ox ; for as to the horse, he was not then used in husbandry.

The origin of this benevolent law with regard to beasts, is seemingly deducible from certain moral feelings or sentiments prevalent among the people of the early ages. They thought it hard that a person should be employed in the collection and preparation of edible and savoury things, and have them continually before his eyes, without being once permitted to taste them ; and there is in fact a degree of cruelty in placing a person in such a situation ; for the sight of such dainties is tormenting, and the desire to partake of them increases with the risk of the prohibition. If any of my readers has a heart so devoid of sensibility towards the feelings of his inferiors, that he can form no idea of any thing torturous in such circumstances, let him endeavour to recollect from the heathen mythology, the representations which the Greek and Roman poets gave of the torments of hell ; such as tables spread with the most costly dainties, and placed before the eyes of the damned, without their being permitted so much as to touch them ; or again, the water in which thirsty Tantalus was immersed to

his lips, and which fled from him whenever he bowed to taste it. Add to this, that by prohibitions of this nature, the moral character of servants and day-labourers, to the certain injury of their master's interest, seldom fails to become corrupted; for the provocation of appetite at the sight of forbidden gratification will, with the greater number, undoubtedly overpower all moral suggestions as to right and wrong. They will learn to help themselves without leave, that is, in other words, (for although not in civil, yet in moral law, it is theft) they will learn to steal; and if the attempt is frequently repeated, the wall of partition between right and wrong, which at first was so formidable to conscience, is at length broken through: they soon learn to go greater and greater lengths, and thus in this school are bred arrant thieves.

Our laws, it is true, pay no attention to such things; but still the voice of nature, if we will but listen to it, will teach us, that in every country, servants imagine, that to steal eatables is no crime; or, as the saying is in Upper Saxony, that *what goes into the mouth, brings no sin with it*. Here they are certainly quite in the wrong: and among a people that had already a taste for foreign and expensive luxuries, such a benevolent law as that now under consideration, could not be introduced, without the complete destruction of domestic œconomy; although indeed, after all, cooks and butlers cannot well be prohibited from tasting the dishes and the wine of which they have the charge. But without dwelling on what our modern luxury renders necessary in this matter, I only say, that to the people of the East, in those times of ancient sim-

plicity, it appeared very cruel to debar a slave or a hireling from tasting of the food which he had under his hands. When Job wishes to describe a perfect monster of insensibility and hardheartedness, he says, *The hungry carry his sheaves ; immured in workhouses they prepare his oil ; they tread his winepresses, and yet they thirst*, Job xxiv. 10, 11. I seldom appeal to Jewish testimonies, or, to speak more accurately, to the Talmud and Rabbins, because they are too recent for illustration of the Mosaic statutes ; but here I cannot altogether overlook the following Jewish doctrine, laid down in the *Baba Mezia*, fol. 83. “ The
 “ workman may lawfully eat of what he works a-
 “ mong ; in the vintage he may eat of grapes ; when
 “ gathering figs, he may partake of them ; and in
 “ harvest he may eat of the ears of corn. Of gourds
 “ and dates he may eat the value of a denarius ;” that is, of four gr̄schen, or one-fourth of a florin. The mention of this specific sum, which was, perhaps, rather too great an allowance, seems to have proceeded from the circumstance of the Jews reckoning a denarius the price of a day’s labour, because it was introduced so lately before the destruction of Jerusalem. I quote the passage, however, not for proof, but merely as a relique of ancient manners among the Jews.

This kindness then, the Hebrews and Arabs extended unto oxen, to which, by reason of their great utility in agriculture, they conceived that they were bound to manifest a certain degree of gratitude. And therefore when Moses, in terms of this benevolent custom, ordained, that the ox was not to be muzzled while threshing, it would seem that it was not merely

his intention to provide for the welfare of that animal, but to enjoin with the greater force and effect, that a similar right should be allowed to human labourers, whether hirelings or slaves. He specified the ox, as the lowest example, and what held good in reference to him, was to be considered as so much the more obligatory in reference to man. That he wished to be understood in this way, we have the less reason to doubt, from this consideration, that in the sequel we shall meet with other statutes, in which he carries his attention to the calls of hunger so far, as to allow the eating of fruits and grapes in other peoples gardens and vineyards, without restraint.

It would appear, therefore, that not only servants, but also day-labourers, might eat of the fruits they gathered, and drink of the *must* which they pressed. The wages of the latter seems to have been given them over and above their meat, and, in consideration of this privilege, to have been so much the less; for with a labourer, who found his own victuals, and yet had the right of eating and drinking of whatever came under his hands, a master would have stood on a very disadvantageous footing. In fact if they did not afford food to day-labourers, it would be impossible to understand how the value of a servant could be compared with the hire of a labourer, (Deut. xv. 18.) and found double; for that a master maintained his servants is unquestionable. But if they likewise gave the labourer his victuals, the value of a servant, and the wages of a labourer might be compared.

CHAPTER X.

OF THE LAWS RESPECTING THE GOEL, OR BLOOD- AVENGER.

ART. CXXXI.

Of the Hebrew and Arabic Names of the Blood-avenger.

§ 1. I MUST now speak of a person quite unknown in our law, but very conspicuous in the Hebrew law, and in regard to whom Moses has left us, I might almost say, an inimitable, but, at any rate, an unexampled, proof of legislative wisdom. In German, we may call him by the name which Luther so happily employs, in his version of the Bible, *Der Bluträcher*, the blood-avenger; and by this name we must here understand “the nearest relation of a person murdered, whose right and duty it was to seek after and kill the murderer with his own hand; so much so, indeed, that the neglect thereof drew after it the greatest possible infamy, and subjected the man who avenged not the death of his relation, to unceasing reproaches of cowardice or avarice.” If, instead of this description, the reader prefers a short definition, it may be to this effect; “the nearest relation of a person murdered, whose right and duty it was to avenge his kinsman’s death with his own

“hand.” Among the Hebrews, this person was called גֹּאֵל, *Goël*, according, at least, to the pronunciation adopted from the pointed Bibles. The etymology of this word, like most forensic terms, is as yet unknown. Yet we cannot but be curious to find out whence the Hebrews had derived the name, which they applied to a person so peculiar to their own law, and so totally unknown to ours. Unquestionably the verb גָּאֵל, *Gaal*, means to *buy off, ransom, redeem*; but this signification it has derived from the noun; for originally it meant to *pollute, or stain*.

If I might here mention a conjecture of my own, *Goël of blood* (for that is the term at full length), implies *blood-stained*; and the nearest kinsman of a murdered person was considered as stained with his blood, until he had, as it were, washed away the stain, and revenged the death of his relation*. The name, therefore, indicated a person who continued in a state

VOL. II. N

* Here it may, perhaps, be objected, that though *Goël*, according to its form, be active, I nevertheless render it passively, *stained*. This objection, however, rests only on the Jewish points, which are 2000 years too modern to merit much respect. If we do not abide by them, we may, with equal propriety, enunciate the word, *Goal*, and then it is a passive form of a noun. I may farther remark, that the word is, wherever it means *blood-avenger*, in the Samaritan version, expressed גֹּאֵל, *Gaül*, as in Numb. xxxv. 21.; which word, *Gaül*, undoubtedly has a passive signification, and, is, indeed, properly a passive participle. In Samaritan, therefore, at least, the title of this personage meant *the stained*. But where *Goël* occurs in its more general sense of a relation, such, for instance, as the kinsman who had it in his power to redeem his cousin's land, or his cousin himself from slavery, the Samaritan version renders it otherwise.

of dishonour, until he again rendered himself honourable, by the exercise and accomplishment of revenge ; and in this very light do the Arabs regard the kinsman of a person murdered. It was no doubt afterwards used in a more extensive sense, to signify the nearest relation in general, and although there was no murder in the case ; just as in all languages, words are gradually extended far beyond their etymological meaning. Etymology may shew the circumstances from which they may have received their signification ; but it is by no means a definition suited to all their derivative meanings, else would it be prophetic. In Arabic, this personage is called *Tair*, or, according to another pronunciation, *Thsair*. Were this Arabic word to be written Hebraically, it would be שֹׂאֵר, (*Schaër*) that is, *the survivor*. It appears, therefore, according to its derivation, to be equivalent to *the surviving relation, who was bound to avenge the death of a murdered person*. The Latin word, *Superstes*, expresses this idea exactly. In Arabic writings, this word occurs ten times for once that we meet with *Goël* in Hebrew ; for the Arabs, among whom the point of honour and heroic celebrity, consists entirely in the revenge of blood, have much more to say of their blood-avenger than the Hebrews ; among whom, Moses, by the wisdom of his laws, brought this character in a great measure into oblivion.

The Syrians have no proper name for the blood-avenger, and are of course obliged to make use of a circumlocution, when he is mentioned in the Bible. Hence they must either not have been acquainted with the office itself, or have lost their knowledge of

it at an early period, during their long subjection to the Greeks, after the time of Alexander the Great.

ART. CXXXII.

Origin of the Goël from the State of Nature.

§ 2. IF this character, with which the Hebrews and Arabs were so well acquainted, be unknown to us, this great dissimilarity is probably not to be ascribed to the effects of difference of climate, but rather to the great antiquity of these nations. (See Art. I.) Nations, how remote soever in their situation, yet resemble each other while in their infancy, much in the same way as children in every country have certain resemblances in figure and manners, proceeding from their age, by which we can distinguish them from adults and old people ; and of this infancy of mankind, or, to speak more properly, of that state of nature, whence they soon pass into the state of civil society, the blood-avenger seems to me to be a relique.

Let us figure to ourselves a people without magistrates, and where every father of a family is still his own master. In such a state, men's lives would of necessity be in the highest degree insecure, were there no such blood-avenger, as we have above described. Magistrate, or public judicial tribunal, to punish murder, there is none ; of course acts of murder might be daily perpetrated, were there no reason to dread punishment of another description. For their own security, the people would be forced to constitute the avengement of blood an indispensable duty, and not

only to consider a murderer as an outlaw, but actually to endeavour to put him to death, and whithersoever he might flee, never to cease pursuing him, until he became the victim of vengeance. As, however, every one would not chuse to undertake the dangerous office of thus avenging a murder, the nearest relations of the unfortunate sufferer would find it necessary to undertake it themselves. It would naturally be deemed a noble deed, and the neglect of it, of course, highly disgraceful, and justly productive of such infamy and reproach as blood alone could wash away. Nor would any one obstruct, but rather aid them, in the prosecution of their revenge, if he had a proper regard to his own security. Allowing, however, that the murderer's relations were to protect him against the blood-avenger, or to revenge his death by a fresh murder in their turn, this would still be a proof that they regarded such revenge as an honourable duty, and that they would have looked upon the family of the murdered person as despicable cowards, if they had left his death unrevenged.

And this is in fact the language of nature among nations, who have not even the most remote connection with the Hebrews and Arabs. I remember to have read somewhere in *Labat's Voyages*, that the Caraihs practise the same sort of revenge, and that it gives rise to family contests of long duration, because the friends of the murderer take his part, and revenge his death on the relatives of the first victim.

We can scarcely conceive the human race in a more perfect state of nature than immediately after the deluge, when only Noah and his three sons were on the

face of the earth. Each of them was independent of the other, the father was too old to be able to enforce obedience, had any of them been refractory; and besides, a father is not expected to inflict capital punishment on his sons or grandsons. Add to this, that Noah's sons and their families were not to continue all together, and to form one commonwealth, but to spread themselves in perfect independence over the whole earth. In order, therefore, to secure their lives, God himself gave this command, Gen. ix. 5, 6. *Man's blood shall not remain unrevenged; but whoever killeth a man, be it man or beast, shall in his turn be put to death by other men.* If the reader wishes to know more of this passage, which has been generally misunderstood, and held out as containing a precept still obligatory on magistrates, let him consult my *Commentationes ad leges divinas, de pœna Homicidii*, in Part I. of my *Syntagma Commentationum*.

Here, the only difference from the law now under consideration is, that God imposes this duty, not upon the nearest relation, but on mankind in general, as bound to provide for their common security, and that he gives every individual a right to put a murderer to death, although he have no connection with the person murdered—a law which remained in force, until mankind introduced civil relations, made laws, nominated magistrates, and thus established a better security to the lives as well as the property of individuals.

ART. CXXXIII.

Of the Mischievous Consequences which, in process of time, may, and, in fact, generally do, ensue from the Law of the Blood-avenger.

§ 3. HOWEVER indispensable to the security of human life the blood-avenger may be in a state of nature, or among a people consisting of small independent hordes, it is easy to perceive that such a mean of security must, in process of time, be accompanied with many sad consequences, and never can be so effectual, nor so exempt from objections, as the law by which a magistrate punishes a murderer, after instituting an investigation of his guilt.

No such investigation is ever thought of by the blood-avenger, before he sets out on his pursuit, nor has he indeed any opportunity of making it, because those who are suspected will not present themselves before his tribunal, to abide a trial of their guilt or innocence. He must, therefore, follow mere report, or what those to whom he gives credit tell him; and this too he does under the influence of passion. But how false, in most cases, are first reports, when a person is found murdered? It may very easily happen, that that man whom he suspects, was not the murderer; yet, in his thirst of revenge, he goes away and attacks him, perhaps insidiously, and when off his guard. Thus an innocent person suffers; and instead of avenging the *first* murder, he commits a *second*. Even in our courts, with all their scrupulous care, an innocent

person may come under suspicion and trial ; but to the judicial proof of a murder, so much is requisite, that the condemnation of such a person would be the next thing to a miracle. The blood-avenger, on the other hand, is the judge of his own quarrel : he is the injured party, and not to kill the murderer, involves him in indelible infamy. Under such circumstances, it is impossible that his vengeance should not sometimes light on an innocent person.

Again ; the blood-avenger may not be in any mistake as to the person ; for *Titius* did really kill *Caius* : but then *Titius* is not therefore necessarily a murderer. Perhaps he did so only in self-defence, or he had not the least intention of hurting *Caius* ; but, to make use of the very example which Moses gives, Deut. xix. 5. *the iron flew from off his axe, and hit him* ; or his death was occasioned by some accident or other of the like nature. All such circumstances are enquired into by a court of justice. But the blood-avenger makes no such enquiries, unless universal report happen to make him acquainted with them. He merely goes in search of the man who caused his relation's death, and takes vengeance upon him, without once hearing his defence ; which indeed were he to allow him to make, it would have the disgraceful appearance of dastardly meanness. It may even be that he is apprized of the innocence of *Titius* by report ; but the point of honour does not permit him to be satisfied with this ; for according to the universal notion with regard to it, an indelible stigma attaches to his character as long as he delays sending *Titius* to hell with his own hand.—He cannot explain to every one the case as it really is,

and as he himself sees it ; and he would be continually subjected to the reproach of having blood in his family unavenged. All this is precisely in the style of our duelling. The injury, to avenge which a duel must be fought, is perhaps a nothing. This the party affronted sees. He knows that the other party meant him no offence ; but the magic word, *Honour*, requires a duel. In like manner, the blood-avenger must pursue the author of his friend's death, though he believes him in his heart to be innocent ; and not satisfied, as in our duels, with a little sword-play, or shooting at him, he may not rest till he has glutted his vengeance in his blood.

But the worst of all is, that one such deed never fails to give birth to another, and so ten murders have not unfrequently their origin from one. Men are not what they should be. They look not on themselves as all of one race. They are neither impartially nor rationally enough concerned for their common security. The family of the murderer take his part from relationship ; protect him, if possible, in the first place ; and if in this they succeed not, then revenge his blood on his persecutor. *His* family now do the same in their turn ; and thus it may happen that the two families may, under the name of blood-avengement, perpetrate murders alternately for a long series of years, and propagate an hereditary enmity from father to son, even to the tenth generation. This is a consequence that need not be feared, when the magistrate, after a sufficient proof of guilt, makes a murderer be executed. No one seeks to be revenged on *him*, because his careful and impartial investigation

of the case commands respect, and he has besides too much power for any individual to meddle with him. His justice, therefore, is certainly preferable to that of the blood-avenger, by which one murder proves perhaps the seed of ten, and perhaps a hundred (murders I will not say, but at any rate) deaths.

However necessary, therefore, and useful, personal revenge may be, in a state of nature, particularly before its abuse, in the case of a murderer's family avenging his death, shall have begun to prevail; and however expedient it may be to encourage and call forth every principle of honour, in order to make the avengement of a man's murder the indispensable duty of his nearest relations; yet it ought, in reason, to cease, or any rate to be subjected to restrictions, when a nation arrives at the state of civil society, and finds a much better method of punishing murders, after deliberate and impartial trial, under the protection of the law. The right and the honour of the blood-avenger, appears to me exactly in the same light as the point of honour in duelling, which, although in a state of nature, not only lawful, but honourable, should cease wherever civil society is established. But the farther comparison of the two practices I postpone, until in the next article, the former, of which I may seem to have hitherto only drawn an imaginary picture, shall have been historically represented, as it actually was, and yet is, in use among the Arabs.

ART. CXXXIV.

Description of the Tair, or Blood Avenger, among the Arabs.

§ 4. HERE I do not mean all the Arabs indiscriminately ; certainly not those of them who have spread themselves in colonies as far as the Atlantic ocean, and have in other countries adopted other customs ; nor yet those of Arabia Felix*, who, as early as 2000 years before Mahomet's time, had their kings, and lived in a civil state ; but it is chiefly of those descended of Ishmael and the other sons of Abraham, and inhabiting Arabia Petræa and Deserta, who have always lived more in a state of nature ; and more particularly of the Bedouins, that I would be understood as here speaking.

Among these Arabs then, not only has the *Tair* the right and the duty of avenging the blood of his murdered kinsman, but the exercise of this duty constitutes the prevailing point of honour among the whole nation. That man is in the highest degree contemptible, and the subject of universal reproach, who has not

* Our information with regard to the avengement of blood in this country is defective. Among the Abyssinians, who came originally from Arabia Felix, across the Red sea, I find from the Jesuit Lobos *Relation historique d' Abessinie*, I. p. 122—124., that the magistrate first discovers the murderer, and then delivers him to the vengeance of the nearest kinsman of the deceased. Here, therefore, we have an example of this practice under the superintendence of the magistrate.

avenged his relation's death. He is at least as much despised as the military man among us who refuses a challenge. And, on the other hand, the avengement of blood is, with them, a man's highest praise ; and regarded as a proof of valour and magnanimity. There are two virtues which they usually denominate *noble*, (*carim*), valour, and noble-mindedness in regard to money ; and two vices of an opposite nature, which they call *laim*, that is vulgar, or characteristic of the canaille, namely, sordid avarice, and cowardice. Both these virtues are combined in the avengement of blood ; for a man must be brave to undertake it, and he must not be a lover of money, else would he accept a compensation from the murderer, which is often offered by him to save his life ; and, on the other hand, when a man abstains from that duty, one or other of the two vices must be the real cause, either want of spirit, or the base desire of gain, which leads him to compound with the murderer for a sum of money.

We have, in like manner, the point of honour in duelling, but it is far from being so national with us, as among the Arabs. Among us many descriptions of people are exempted from the obligation of fighting ; it is, indeed, in a peculiar manner confined to military men, and persons of rank ; but among the Arabs, the honour of avenging blood binds the whole nation, who, in their solitary deserts, certainly could never be secure of their lives, were there not in every case of a murder a particular individual, whose honour it is to seek out the perpetrator of the crime, and avenge it, as a duty to his country. Our duels, in these times, at least, when poetry has attained its proper dignity and ex-

cellence, are not sung by poets, except in the burlesque style, and to pour contempt upon them. We all know great lords who have challenged one another ; but no poet would venture to take notice of such a thing in a panegyric poem, unless he wished to do his utmost to subject his publisher to confiscation. Our countryman *Kleist*, in whose poems, the

Dulce et decorum est pro patria mori,

appears with rather a better grace than in Horace, because he closed his gallant career after 14 wounds in the battle of Cunnersdorf, would never have demeaned himself to sing the praises of duelling in earnest, as he sung of war. *Zachariä*, who, in his poem called *the Bully*, (*Renommist*), does so in jest, instead of a muse, invokes the goddess of quarrelling, and intreats her to inspire him with language,

By common poet never yet profan'd ;

and of all his poems there is none so universally pleasing as this one, in which, along with the Bully, he ridicules the point of honour in duelling : and this is a sure proof, that it does not touch upon the practice, in a style contrary to the national sentiments. But among the Arabs, whose national spirit may be said to dwell in their poems, and to be propagated by means of them, the finest and most sublime pieces of serious poetry are devoted to the praises of the blood-avenger ; and wherever the poet means to celebrate the virtues of his hero, he never fails to speak of his thirst of revenge, his valour, and his hospitality, in the highest terms. The reader may peruse the poems,

which he will find in pp. 67, 72, 97, and 114. of my *Arabic Chrestomathy*; with regard to which poems, should he say, he understands not Arabic, I here farther add, that in the preface to my *Arabic Chrestomathy and Grammar*, in which I have given specimens of the poetry of that language, he will find them translated into German.

The Arab, however, was not bound to seek instant revenge, but might wait a favourable opportunity, in order to take it safely and without danger, as, for instance, when he happened to find the murderer alone, so that his family could not protect him. At the same time, the man that was truly zealous, and wished to observe the law of honour in the most perfect manner, sometimes made a vow to drink no wine, until he accomplished his revenge. (*Arab. Chrest.* p. 76.) This, at least, was the case before the time of Mahomet, when the use of wine was prohibited. As to the means by which he was to attain his end, they were left entirely to his own pleasure. They were all alike honourable and creditable. He was under no necessity of sending the murderer a challenge: for artifice, treachery, and even assassination, were lawful in avenging blood. In one of their poems we find a panegyric on the artful scheme of a blood-avenger, who called the murderer to his aid, under pretence of having been plundered by a highwayman, whom he wished to find out; and when he got him alone to the place, where the pretended robber, but who was, in fact, his confederate, had hid himself, stabbed him dead from behind. That amidst such manners, and such ideas of honour, the life of a murderer, and even of an honest

man, if unjustly suspected, nay, and even of the blood-avenger himself, must have been passed in a state of continual fear and suspicion, and that he could seldom have slept in peace out of his own house, I need not observe. The family of a murderer generally espoused his cause, and thence arose family feuds, which by alternate murders sometimes subsisted for centuries. If, however, the murdered person, or his avenger happened to have a friend in the murderer's family, *he* perhaps, although his real relation, proved his betrayer; and, however insidiously he might go to work with that view, still his conduct was extolled as honourable. In short, this idea went so far, that no means were left untried to taste the sweets of revenge. We find one pretending to be mad, and another cutting off his nose, merely to attain this object; and in the national poems, both are celebrated for their contrivances, and held forth, if I may so speak, as edifying patterns of virtue.

A story inserted in my *Arabic Chrestomathy*, p. 94,—97. in the words of an Arab, will illustrate this point more fully. Hatim, the father, and Adi, the grandfather, of Kais, had both been murdered; but as that happened before Kais was capable of reflection, his mother kept it a secret from him, that he might not at any future period meditate revenge, and thereby expose his own life to danger. In order to guard against his having any suspicions, or making any inquiries as to their deaths, she collected a parcel of stones on two hillocks in the neighbourhood, that they might have the appearance of burial places (such perhaps as are our sepulchral tumuli in Ger-

many), and told her son, that the one was the grave of his father, the other, of his grandfather; for we must observe, by the way, that the Arabs, in general, make use of no other monument, than a heap of stones over a grave. Kais of course had no other idea than that his progenitors had died natural deaths, and were there buried. We cannot but infer from this device, how apprehensive mothers must then have been, lest their sons should, in pursuit of the imaginary honour of blood-avengement, lose their lives; just as mothers with us still are in regard to duelling. But in the present case, the benevolent artifice of maternal love came at last to be frustrated. Kais had a quarrel with another young Arab, and received from him this bitter taunt, "You would do better to shew your courage on the murderer of your father and grandfather." These words spoke much and deeply to his heart; he became melancholy; and threatened his mother with killing either her or himself, if she did not tell him the whole truth relative to the deaths of his father and grandfather. He thus extorted the secret from her; and immediately set out on a peregrination, to which I cannot apply a more proper phrase, than our common one, of going in quest of adventures. He went to a distant part of the country in quest of a man named Chidasch, a friend of his father's, and whom he knew to have been indebted to his father on the score of gratitude—for that too enters into an Arab's idea of honour, barbarous as it otherwise is. When he found him out, he at first entered his house merely as a stranger, according to the Arabian laws of hospitality. The wife of Chidasch immediately observed some-

thing in his face, which led her to ask whether he was not going to avenge blood. Chidasch himself recognised in him a likeness to his friend, and after a short conversation, Kais told him wherefore he was come. Chidasch was somewhat perplexed: for one of the murderers was his own uncle: but he told Kais, that although he would fain put the murderer into his hands, he could not do it openly, but that he had only to mark his procedure next night, when he would set himself down by the murderer, and give him a blow familiarly, and in jest, upon which he might kill him himself, and trust to him for protection against all retaliation from the family. This was agreed upon; Chidasch betrayed his uncle by the preconcerted signal; Kais killed him; and when the family threatened vengeance, Chidasch apologized for him, and said, he had done nothing more than put his father's murderer to death. They then set off both together for the province of Heger, or Baharein, on the Persian Gulf, where the murderer of his grandfather dwelt. Chidasch hid himself behind a sand hill, and Kais went up to the murderer, and after complaining to him, that a robber had attacked him among the sand hills, and taken his property from him, requested that he would help him to recover it. According to the prevailing maxims of honour and valour among the Arabs, he could not refuse the stranger's request, and immediately commanded some of his people to attend him. This, however, did not suit Kais's view, whose countenance instantly betrayed the appearance of a smile; and on the other asking him, Why he laughed, replied, "With us no brave man would take

“so many people to his aid, but would rather come “alone.” The man was ashamed, and ordered his people back, which was what Kais wanted. And when they got a sight of the pretended robber among the sand hills, and the man was about to attack him, Kais stabbed him through the body from behind. And this base and treacherous procedure is immortalized by a poem, which exactly suits the national taste of the Arabs. So completely did the avengement of blood justify and extol, as brave and honourable, every thing which we would account infamous, and characteristic of a ruffian.

It is besides observable, that cruelty was carried to great lengths in their revenge, and that we very seldom find any trace of that magnanimity, which is with us so generally connected with the point of honour, and wishes rather to shew revenge than to taste it. That they should not have considered the wounding a murderer, or any thing short of killing him, a sufficient expiation of his guilt, I do not reckon cruelty; but we find their very poets describing in picturesque language, and with a barbarous sort of delight, how they dug right through the wounds of their enemy, and twisted their spears in them round and round, to enjoy their revenge to the full. *Muharrik*, a king of *Hirta*, who lived a little before Mahomet’s time, had vowed to burn an hundred Temanites alive, because the Temanites had killed his brother. While engaged in this barbarous deed, a Temanite observing the fire from afar, imagined that a great banquet was preparing, and, according to the freedom of the Arabs on such occasions, was determined to invite himself to

share it as a guest. He therefore came directly to the spot. The king asked him who he was; and when he found he was a Temanite, although in general the Arabs sacredly protect the man who comes as a guest, though never invited, he caused him to be thrown into the flames; and to excuse this atrocity, we are told that he found one Temanite wanting to complete the number he had vowed. *Arab. Chrest.* p. 107.

Mahomet endeavoured to mitigate this horrible law, which was thus often even dangerous to innocence; but unfortunately he began at the wrong end. For, instead of enjoining a previous investigation, that an innocent person might not suffer instead of the guilty, he recommended as an act of mercy, pleasing in the sight of God, the acceptance of a pecuniary compensation from the actual murderer, in lieu of revenge. His words are, “In cases of murder, retaliation is prescribed to the faithful, so that freeman must die for freeman, slave for slave, wife for wife. But where a man’s nearest kinsman departs from that right, he has a just claim against the murderer for a moderate compensation in money, the acceptance of which is an alleviation of the crime in the sight of God, and an act of mercy. But if he afterwards overstep this rule,” [that is, by killing the person to whom he has remitted the murder,] “God will punish him severely. For the security of your lives rests on the right of retaliation*.” In this strange law, which in fact

* See chap. ii. of the Koran, v. 173,—175. in *Hinkelman’s* edition, but v. 179, 180, in *Marracci’s*. We find a much more rational

makes the right of retaliation quite ineffectual to the security of a man's life, because it can be compounded for by the payment of money to his kinsman, Mahomet manifests a much greater opposition to the national maxims of honour, than a wise legislator would have done; by representing as merciful, and pleasing to God, a practice which to be sure was not uncommon, but still was deemed base and selfish, and, as a Frenchman would say, *vilain*, in the proper and complete sense of the word. But on the principles of sound philosophy, such a transaction is by no means acceptable in the sight of God, who commands murders to be punished without mercy, that men's lives may be secure; and an Arab, bred up in the national ideas of honour, must always have had a stronger inclination to trespass a precept of religion, thus half left to his option, than to forfeit his honour. I remember a passage in an Arabian poet, who lived before Mahomet, which describes cowards in the following terms: "Those who injure them
" they forgive, and to the wicked they repay good for
" evil: men so pious as they are, God has not created
" among all the human race besides. But give me
" the man who, when he mounts his horse or camel,
" is furious in attacking his enemy."—I have inserted the whole poem in the preface to my Arabic Grammar, where the reader will find several other specimens of Arabic poetry, with my sentiments on their

O 2

law given in chap. xvii. 35 "If a man is unlawfully killed, we give
" to his nearest relation the right of revenge; but let him not go
" beyond bounds in putting the murderer to death;" that is, let him not put him to a cruel and torturous death.

national taste in that species of composition.—Now, where poems of such a nature express the sentiments of a nation, a precept of false morality, recommending mercy and forgiveness in the wrong place, could scarcely have much influence, except with the few enthusiasts, who might happen to be among the people, and whose belief of religion was very ardent.

No doubt, in those countries without the bounds of Arabia, where the people had not the same ideas of honour in avenging blood, and where the Mahometan religion, which its victorious adherents propagated by the sword, was adopted only from terror, as in Persia, for instance, such an admonition might have an influence on the law. *Chardin*, in his *Travels* (4to. edit. of 1711, p. 299.) relates, that in that country, when a person is murdered, his relations go before a court of justice, making a great outcry, and demanding that the murderer be delivered up to them, that they may satiate their revenge; and that he is accordingly delivered up to them by the judge, in these words: “I give this murderer into your hands, take satisfaction yourselves for the blood he has shed; but remember that God is just and merciful;” which manifestly allude to the two passages above-quoted from the Koran, especially the latter.—The relations may then, if they please, put him to death, and that, in whatever way they think fit. A rich murderer, on the other hand, endeavours to accommodate matters with the relations of the murdered person, and to prevail upon them to accept a pecuniary compensation; and the judge, to whom he also gives money, exhorts them to mercy, that is, to be satisfied with such a

compensation, although he cannot compel them to accept it. This is in fact not a good consequence of Mahomet's well-intended, but silly admonition ; for, in this way, the poor man has little security for his life against the rich, because the latter has the means of averting retaliation, by persuading the poor man's relations, which will seldom be a very difficult matter, to accept of money in lieu of blood.

But in Arabia itself, and among the Arabs that dwell in the neighbouring country of Palestine, Mahomet's admonition seems to be much weaker in its influence than those national ideas of honour, by which it is opposed. At least *Arvieux*, who, in the preceding century, lived for some years among the Arabs in Palestine, relates, that their thirst of revenge is implacable, and that families break off all friendship, when an individual of one family murders one of another. They do not, indeed, rush impetuously to revenge, but patiently wait a favourable opportunity, without, however, having any idea of reconciliation, till blood be actually avenged. I give his own words, because I think the reader will be glad to see them ; more especially as they coincide so perfectly with the accounts of this matter which I have given above, previous to the time of Mahomet, and from their ancient writers : “ Il n'y a parmi eux que la haine du
 “ sang, qui est irreconciliable ; par exemple, si un
 “ homme, a tûe un autre, l'amitié est rompüe entre
 “ leurs familles, et toute leur posterité ; elles n'ont
 “ plus de communication ensemble, plus de commerce,
 “ ni d'alliance. Si elles se trouvent dans quelque in-
 “ terêt commun, ou s'il y a quelque mariage a pro-

“poser, on repond honnêtement, vous savez qu’il y a
 “du sang entre nous; cela ne ce peut pas, et nous avons
 “nôtre honneur a conserver. Ils ne se pardonnent
 “pas là dessus, jusqu’a ce qu’ils soyent vangés, mais
 “ils ne s’empressent point pour cela. Ils attendent
 “leur temps, et l’occasion, de la faire bien à propos.”

Upon the whole, Mahomet seems to have had no very singular talents for a legislator, and the contents of his laws serve sufficiently to assure us that no deity inspired them. We shall very soon see with what superior wisdom Moses contrived to disarm the blood-avenger of his mischievous qualities, without interfering with what was useful in his character.

ART. CXXXV.

*Comparison between Blood-avengement among the Arabs,
 and Duelling among the Europeans.*

§ 5. BUT before I come to consider the Mosaic statutes on this subject, I beg leave to be indulged in a short *excursus*, which will serve to give the reader a very exalted idea of that legislative wisdom which they display.

As the avengement of blood is a point of honour among the Arabs, so is duelling among us. Both rest on the national ideas of honour; both are lawful and laudable in the state of nature: but neither should be tolerated in a state of civil society, both being, in a moral, as well as a political view, great evils; because they would continue the practice of personal revenge, after the institution of public magistrates, whose duty

it is to investigate crimes impartially, and to punish them without revenge, or any other passionate emotion.

That in the state of nature, and where we acknowledge no superior, duelling is allowable, will hardly admit a doubt ; for how are disputes to be decided otherwise, if either of the parties will not listen to the voice of justice ? or how shall people be secure against injuries but by the aid of the sword ? The very same reasons for which we hold a nation morally justified, in carrying on a war to which they have been compelled, speak, in like manner, in justification of duelling in the state of nature ; for what else are duels than wars between individuals ? Provided the injury that demands a duel, be sufficiently considerable, and that we have right on our side, it is impossible to be able to condemn it, without also condemning all wars, and so becoming Quakers in this point of morality. Duelling, besides, merits a moral commendation in a state of nature, as far preferable to the use of arms in some other ways ; particularly, in sudden and insidious attacks. My conduct is nobler and more magnanimous if I let my adversary previously know that I mean to draw my sword upon him, than if I do not ; and duelling has the same relation to other modes of fighting, that a war duly declared bears to one carried on without any declaration. Never did any one blame a declaration of war before the commencement of hostilities, and some indeed have gone so far as to maintain its absolute necessity. This I am not inclined to assert ; but no one will dispute that it is at least morally proper, noble, magnanimous. Methinks

also, it would in the state of nature contribute much to peace of mind, and a cheerful life, if an universal notion of honour introduced duelling instead of other modes of attack; for as things now are, in such a state, a person must be under unceasing apprehensions of sudden surprise, and live in perpetual distrust and anxiety. Thus the Arab, who must avenge blood, and is unacquainted with the practice of duelling, can never be secure of his life, if he has an enemy who lies in wait for him. He can, no doubt, actually die but once; but he must be a thousand times in terror of death every day, and avoid every stranger, lest he be in pursuit of blood. Duelling has, moreover, this advantage, that the challenge gives an opportunity for the explanation of any unjust suspicion, (provided a new point of honour does not prohibit it,) and, if I might take an example from our present subject, of shewing that a man is not the murderer he is thought to be. In the case of a sudden attack, on the contrary, the man whom the blood-avenger considers as the murderer of his relation, is, whether justly or unjustly, stabbed to the heart before he knows why he is so.

The European law of duelling, therefore, is, in my opinion, nobler than the Arabian law of blood-avengement, which authorises even private assassination, and commands revenge to be satiated to the full. But it is only in the state of nature, that either should take place. They ought, in justice, both to cease, whenever men live in a state of civil society, under the protection of laws and magistrates. This every moralist inculcates, and every legislator knows it. But here

arises the question, How shall we put a stop to them, when a national idea of honour is connected with the latter among Asiatics, and with the former among the more enlightened and magnanimous inhabitants of Europe? This indeed is a difficult problem, which no European legislator has hitherto been able to solve.

The first plan that suggests itself, no doubt, is to prohibit them; but a prohibition has but little effect against a deep rooted national idea of honour. The second plan is, to prohibit them very peremptorily, to denounce the punishment of death against them, and in no case to dispense therewith, or rather, to denude one's self of all right to pardon. Such, perhaps, was the idea of Louis XIV., when he enacted his law against duelling; but experience has shown, that capital punishments are here too futile an engine of terror; and that, indeed, might naturally have been foreseen. The man who fights a duel puts himself in as great danger of his life, as the laws can possibly threaten him: for in a serious duel one of the parties must fall. Here, therefore, it is one to one: and, in like manner, the laws threaten no certain death, but only a probable one, for a man may hope to escape by keeping the affair secret, or by converting the duel into a rencounter, or by powerful interest, or by flight. He who is more afraid of death, than of the loss of honour, will not fight a duel; but the man who prizes his honour, beyond even his life, will not be deterred from a duel by Louis the Fourteenth's law; in fact, so intolerable are the evils connected with the loss of honour, particularly in the military profession, that even a coward will prefer death to them. There are as many who

fight from cowardice, and because they are compelled to do so by others, as from true courage.—But what if the stigma of infamy were set on duelling? The man who should propose such a plan would shew himself but very little acquainted with the human heart; else could he never allow himself to imagine, that a king, or even a despotic sultan, could, by his mere word, make that infamous, to which his whole people attached an idea of honour. Honour and disgrace depend not on laws, but on human opinion. It is, in general, no honour to be hanged: but where the gallows is the punishment of duelling, duelling is called, in the language of the whole people, *an affair of honour*; and of course, that man loses his honour, who shuns the road to the gallows. If again, we have recourse to another species of infamy, and actually brand duellists with the mark of a gallows on their foreheads; by the time that a hundred are thus branded, it will become a mark of honour, and perhaps the hundred and first may even conceive a desire to purchase it with money. There is, besides, to be taken into the account, a certain idea of courage, attached to duelling, which inspires respect, and will pretty well secure the persons branded, from insults. At any rate, this mark of disgrace will be no mark of disgrace, as long as the duellist preserves his right hand; for I admit, that if the law ordered *it* to be cut off as part of his punishment, and so placed him beyond the power of commanding respect by its aid, the gallows on his forehead might be of some effect; and yet this would, after all, be but a very doubtful experiment of legislative policy, and one of which the result could not be anticipated with cer-

tainty ; for the national ideas of honour might accompany even those that should be thus mutilated.

Where such ideas prove mischievous, and are deeply rooted, a legislator cannot seemingly pursue a more prudent plan, than, instead of directly attacking, or thinking to eradicate, his people's prejudices concerning the point of honour, to regulate his procedure in some measure by them, and endeavour to discern something in them, by which he may render them harmless, and bring them within certain limitations, and so tolerate them, when subjected to the jurisdiction of the magistrate. And this is that very *chef d'œuvre* of legislative wisdom, which renders the Mosaic statutes on this subject so justly the objects of admiration.

ART. CXXXVI.

The Procedure of Moses with regard to the Rights of the Blood-avenger.

§ 6. MOSES found the *Goël* already instituted, and speaks of him in his laws as a character perfectly known, and therefore unnecessary to be described ; at the same time that he expresses his fear of his frequently shedding innocent blood. But long before he has occasion to mention him as the avenger of murder, he introduces his name in his laws relating to land, as in Lev. xxv. 25, 26., where he gives him the right of redeeming a mortgaged field ; and also in the law relative to the restoration of any thing iniquitously acquired, Numb. v. 8. The only book that is possibly more ancient than the Mosaic law, namely, the book of Job, com-

pares God, who will re-demand our ashes from the earth, with the *Goël*, chap. xix. 25. From this term, the verb גאל, which otherwise signifies properly *to pollute*, had already acquired the significations of *redeeming, setting free, vindicating*, in which we find Moses often using it, before he ever speaks of the blood-avenger, as in Gen. xlviii. 15. Exod. vi. 6. Lev. xxv. 25, 30. 33. xxvii. 20. &c.; and even re-purchase itself is, in Lev. xxv. 31, 32. thence termed גאולה *geulla*. Derivatives in any language follow their primitives but very slowly: and when *verba denominativa* descend from terms of law, the law itself must be ancient.

In the first statute given by Moses concerning the punishment of murder, immediately after the departure of the Israelites from Egypt, although he does not mention the *Goël* by name, he yet presupposes him as well known. For he says, *God will, for the man who has unintentionally killed another, appoint a place, to which he may flee*, Exod. xxi. 12, 13. There must, of course, have been some one who pursued him, and who could only be stopped by the unhappy man reaching his asylum. At any rate, he needed not to flee from justice; and it was quite enough if the magistrate acquitted him, after finding him innocent.

The first passage in which Moses expressly speaks of the *Goël*, as the avenger of blood is in the xxxvth chapter of Numbers: but even there he certainly does not institute his office, but only appoints (and that too merely by the bye, while he is fixing the inheritances of the Levites) certain *cities of refuge*, to serve as *asyla* from the pursuit of the blood avenger, (ver. 12.) for which there was no necessity, had there been no such

person. In the second statute, Deut. xix. 6. he manifests great anxiety lest the *Goël* should pursue the innocent slayer in a rage, and overtake him, when the place of refuge happened to be too far distant. Now these are evidently the ordinances of a legislator not instituting an office before unknown, but merely guarding against the danger of the person who happened to hold it, being led by the violence of prejudices or passion, to abuse its rights—that is, in the case in question, being hurried, by a false refinement of ideas on the score of honour, to shed the blood of an innocent man.

I think I can discover one trace of the terrors which the *Goël* occasioned, as early as the history of the patriarchal families. When Rebecca learnt that Esau was threatening to kill his brother Jacob, she endeavoured to send the latter out of the country, saying, *Why should I be bereft of you both in one day?* Gen. xxvii. 45. She could not be afraid of the magistrate punishing the murder; for the patriarchs were subject to no superior in Palestine; (Art. XXXI.) and Isaac was much too partial to Esau, for her to entertain any expectation, that *he* would condemn him to death for it. It would, therefore, appear, that she dreaded lest he should fall by the hand of the blood-avenger, perhaps of some Ishmaelite.

Now to this *Goël* although Moes leaves his rights, of which indeed he would in vain have endeavoured to deprive him, considering that the desire of revenge forms a principal trait in the character of southern nations*; he nevertheless avails himself of the aid of cer-

* The Arabs are notorious for the implacability of their revenge—of which the reader will find many proofs in *Arrieux*.

tain particulars of those rights, in order to bring the prevalent ideas of honour under the inspection of the magistrate, without hurting their energy, and to give an opportunity of investigating the circumstances of the crime meant to be avenged, before its punishment should be authorised.

We see that sacred places enjoyed the privileges of *asyla* : for Moses himself took it for granted, that the murderer would flee to the altar, and, therefore, he commanded, that when the crime was deliberate and intentional, he should be torn even from the altar, and put to death, Exod. xxi. 14. Among the Arabs we find that revenge likewise ceased in sacred places, as for instance (long before Mahomet's time) in the country round about Mecca, particularly during the *holy month of concourse*. In such places, therefore, honour did not bind the avenger to put a murderer to death.—Now Moses appointed, as places of refuge, six cities, to which ideas of sanctity were attached, because they were inhabited by the priests, Numb. xxxv. 9—35. Deut. xix. 1—10. To these every murderer might flee, and they were bound to protect him, until the circumstances of the case should be investigated ; and, in order that the *Goël* might not lie in wait for him, or obstruct his flight, it was enjoined, that the roads to these six cities should be kept in such a state, that the unfortunate man might meet with no impediment in his way, Deut. xix. 3. I do not by this understand, such a state of improvement as is necessary in our highways on account of carriages, but, 1. That the roads were not to make such circuits, as that the *Goël* could overtake the fugitive on foot, or catch him by

lying in wait, before he reached an asylum ; for, in fact, the Hebrew word (כִּינִי) properly signifies *to make straight* ; 2. That guide-posts were to be set up, to prevent him from mistaking the right way ; and, 3. That the bridges were not to be defective ;—in short, that nothing should retard his flight.

If the *Goël* happened to find the fugitive before he reached an asylum, and put him to death, in that case Moses yielded to the established prejudices respecting the point of honour. It was considered as done in the ardour of becoming zeal, and subjected him to no inquisition, Deut. xix. 6.

If he reached a place of refuge, he was immediately protected, and an inquiry was then made, as to his right to protection and asylum ; that is, whether he had caused his neighbour's death undesignedly, or was a deliberate murderer. In the latter case he was judicially delivered to the *Goël*, who might put him to death in whatever way he chose, as we shall state at more length, under the head of capital punishments. Even although he had fled to the altar itself, which enjoyed the *jus asyli* in the highest degree, it could not save him, if he had committed real murder, Deut. xix. 14.

If, however, the person was killed accidentally, and unintentionally, the author of his death continued in the place of refuge, and the fields belonging to it, which extended to the distance of 1000 ells all around the walls of the Levitical cities ; and he was there secure, in consequence of the sanctity of the place, without any reflection upon the honour of the *Goël*, even in the opinion of the people. But farther abroad he durst not ven-

ture ; for if the *Goël* met with him without the limits of the asylum, Moses paid no respect to the popular *point d'honneur* ; he might kill him without subjecting himself to any criminal accusation. The expression of Moses is, *It is no blood*, or blood-guilt, Numb. xxxv. 26, 27. This confinement to one place may, perhaps, be thought a hardship : but it was impossible in any other way to secure the safety of an innocent man-slayer, without attacking the popular notions of honour ; that is, without making a law which would have been as little kept as are our laws against duelling. But by this exile in a strange city, Moses had it besides in view, to punish that imprudence which had cost another man his life : and we shall in the sequel, meet with more instances of the severity of his laws against such imprudences. Allowing that it was an accident purely blameless, still its disagreeable consequences could not fail to make people more on their guard against similar misfortunes ; a matter to which, in many cases, our legislators, and our police-regulations, pay too little attention. For that very reason, Moses prohibited the fugitive from being permitted, by any payment of a fine, to return home to his own city before the appointed time, Numb. xxxv. 32.

His exile in the city of refuge continued until the death of the high-priest. As soon as that event took place, the fugitive might leave his asylum, and return to his home in perfect security of his life, under the protection of the laws. It is probable that this regulation was founded on some ancient principle of honour attached to the office of the *Goël* : of which, however, I have not been able to find any trace remaining. It

would seem as if the death of the priest, or principal person in the nation, had been made the period beyond which the avengement of blood was not to extend, in the view of thus preventing the perpetual endurance of family enmities and outrages. We shall perhaps hereafter find an opportunity of giving a more particular illustration of this point.

By these regulations, borrowed from those very notions of honour which influenced the *Goël*, Moses did not, it is true, effect the complete prevention of the shedding of *innocent blood*, (for so Moses terms it, in the case of the *Goël's* killing the innocent man-slayer in his flight); for civil laws cannot possibly prevent all moral evil; nor yet was he able to protect the man who had through mere inadvertence deprived another of his life, from all the vexatious consequences of such a misfortune: but thus much he certainly did effect, that the *Goël* could but very rarely kill an innocent man, and that a judicial enquiry always preceded the exercise of his revenge; and that enquiry, even when it terminated in condemnation, drew after it no fresh bloodshed on the part of the murderer's family, because every one knew that no injustice was done him. Of course, ten murders did not now proceed from one, as was the case when the *Goël's* procedure was altogether arbitrary, and subject to no restraint.

It would appear that Moses had thus completely attained the object of his law. At least, in the history of the Israelitish nation, we find no examples of family enmities proceeding from the avengement of blood, or of murders either openly or treacherously perpetrated from that national idea of honour; and but

one single instance of the abuse of *Goëlistm*, or rather where it was used merely for a pretext, and the transaction carried on in complete opposition to the acknowledged principles of honour. This instance we find in the history of David, in which the three following particulars relative to this subject deserve notice.

1. David, in his elegy on the death of Saul and Jonathan, seems, in one of his expressions, to allude to the avengement of blood. The Arabs, in their poems, very commonly observe, that no dew falls on the place where a murder has been committed, until the blood has been avenged; and David thus exclaims, *Ye mountains of Gilboa, on you fall neither dew nor rain*, 2 Sam. i. 21.; which was as much as saying, the Philistines may look for my avengement of the death of Saul and Jonathan. This, however, is merely a poetical allusion; for the law of *Goëlistm* did not extend to those slain in battle.

2. Joab assassinated Abner under the pretext of revenge for his having killed Asahel *his* brother in battle, 2 Sam. iii. 19,—23. iii. 22,—27. This, however, was a mere pretext; for Joab's only object was to get that man put out of the way, whom David had appointed to the chief command of the war. He afterwards acted in the same manner to Amasa, who had killed no brother of his, but had been only guilty of the same crime of getting himself made Generalissimo to Absalom, 2 Sam. xvii. 25. xx. 10. David, when he lay on his death-bed, made this remark on Joab's conduct in these two instances, that blood shed in war was not, according to the Hebrew ideas of

honour, to be avenged in peace; and that he therefore regarded Joab as a wilful murderer: and he gave it in charge to Solomon his son to have him punished as such, 1 Kings ii. 5, 6.

3. When we take a connected view of the whole story related in 2 Sam. xiii. 37. to xiv. 20. we should almost suppose that David had for a time pursued his son Absalom, on account of his murdering his elder brother, not so much in discharge of his duty as a king, as in the capacity of *Goël*, and that the idea of his honour, as such, had prevented him from forgiving him. Absalom staid out of the country with the king of Geshur, and yet David withdrew for a time in quest of him, chap. xiii. 39. This is properly not the business of a magistrate, who is not required to punish a murderer who has fled from the country, but of a *Goël*.

Allowing, however, that I were here in a mistake, thus much still is certain from chap. xiv. 10, 11. that there was yet a *Goël*; that to mothers he was an object of terror; and that David, on some occasions, took upon him to prohibit him by an arbitrary decree from pursuing an actual murderer, when there were any particular circumstances in the case.

So much concerning the rights of the *Goël*, as modified by the Mosaic statute.

There is yet to be noticed one additional circumstance relative to it, entirely conformable to Oriental ideas of honour, and of great importance to the security of lives. Moses (Numb. xxxv. 31.) positively prohibits the receiving of a sum of money from a murderer in the way of compensation. By the ancient

Arabian manners, too, we have seen that this was deemed disgraceful. Here, therefore, Moses acted quite differently from Mahomet, and, as will be universally acknowledged, much more judiciously.

ART. CXXXVII.

Of the other Rights of the Goël, and concerning Guardians.

§ 7. THE *Goël* had the farther right of redeeming the land sold by his kinsman, Lev. xxv. 25,—27. ; but that right he exercised, not as the avenger of blood, but as a relation. On this point we have already enlarged under Art. LXXIII., which treated of the agricultural laws.

In the statute, Numb. v. 8. if the person, from whom any thing has been purloined, be no longer alive, it is ordered that restitution be made to his *Goël*, as being his nearest heir. If the father had a son, that son was his *Goël*.

From Ruth ii. 20. compared with iii. 12. I find, that the nearest relation but one, was denominated (מגוֹל) *Miggoël*, which admits of a better version in Latin (*post Goëlem*) than in German.

Here the reader will perhaps expect some information respecting guardians ; but I have it not in my power to say any thing concerning them from the Mosaic statutes. Mahomet speaks of them in the Koran, and from him we may learn the laws of the Arabs relating to guardianship, which seems to have had the singular advantage of being usufructuary

among that people; but we cannot thence draw any positive conclusion as to its nature among the Israelites. Here then we find a chasm, not indeed in the Mosaic law, but in our knowledge of it.

In the (*Entwurf der Burgerlichen Gesetze der Juden*) *Sketch of the Civil Laws of the Jews*, by F. W. F. v. W. J. we find at p. 73. a law in the following terms: "Fathers shall be obliged to name guardians to their children, to act the part of parents after their death. It is also incumbent on fathers to fix the duration of their guardianship." It would seem as if the chasm were thus supplied; but then it is not by Moses, and it is in such a strange way, that perhaps no nation under the sun was ever subject to a law so nearly impracticable. For, according to it, every father would be bound to make a testament, and durst not die until he had made it. Yet how can he possibly be constrained to do so. The passage cited in proof, from Gal. iv. 2. does not apply to the point; for how could the author demonstrate that St. Paul here alluded to the Jewish, and not rather to the Roman law?

Protestants very frequently represent Mordecai as an example of a Hebrew guardian, because *Luther*, in his version of Esther ii. 7. calls him *Esther's guardian*. This, however, is a mistake in *Luther*; for the Hebrew word (מן) *Omen*, does not signify a guardian, but one who brings up a child. If we read the whole verse, we shall see that Mordecai took the orphan Esther under his protection, and reared her as his child, which is quite a different thing in law from being a guardian. A person familiar with the Vul-

gate, would not be likely to commit such an error, because it renders the word, *Nutritius*. But were this instance more accurate than it is, still it would give us but very little insight into the laws of guardianship, and would, besides, be by far too recent for an evidence of the Mosaic law on this subject.

CHAPTER XI.

LAWS RESPECTING STRANGERS, AGED, DEAF, DUMB, AND POOR PERSONS.

ART. CXXXVIII.

Of Strangers.

§ 1. STRANGERS are very often mentioned by Moses in his laws, and he specifies two different descriptions of them, (גרִים) *Gerim*, and (תושבים) *Toschabim*. I do not certainly know wherein these differed; but from Lev. xxii. 10. I am almost inclined to conjecture that *Toschab* had meant a foreigner who had no house of his own, but dwelt in lodgings; whereas *Ger* meant a stranger in general, even if he should have bought a house of his own. In confirmation of this idea, we find the verb (גיר) *Gar*, to be a stranger, applied to the Levites, who had indeed houses of their own, but were considered as strangers, because they possessed no land. In short, then, every man who had no landed property was a *Ger*, and every one who had no house a *Toschab*. At the same time, I certainly do not think that this distinction of the terms was uniformly observed, particularly in the historical books of Scripture.

From the nature of patriotism among the people of ancient times, which commonly went the length of

national hatred, strangers were, in many cases, subjected to such humiliating treatment, that Moses found it necessary to protect them by several different statutes. Accordingly we find them, in Scripture, conjoined with other classes of mankind that are entitled to compassion, such as the *poor*, the *widow*, and the *orphan*.

It is the object of Moses to alleviate as much as possible the hardships of their situation; and he represents it as peculiarly reasonable that the Israelites should treat them kindly, because their whole nation had themselves been once strangers in Egypt, Lev. xix. 34, Deut. x. 19. The Jewish laws, therefore, do not merit the reproach of inculcating hatred of strangers, although the people themselves, who needed such laws, can scarcely be altogether acquitted of the charge of manifesting harsh, and sometimes even malicious sentiments towards foreigners.

Moses urges his people as strongly as a legislator can, *to love strangers*, and expressly includes them under the designation of neighbours, whom they were enjoined to love even as themselves, Lev. xix. 33, 34. Deut. x. 18, 19. He warns them in a particular manner not to oppress them, probably because he knew that national hatred would make those to whom he gave laws, too much disposed to do so; and he represents God himself as the protector and avenger of strangers.

The sabbatical year was instituted partly for their benefit; and the fruits both of the field and the garden they might, during that year, appropriate to their own use with perfect freedom.

The great difference between citizens and strangers might have been supposed likely to cause a distinction in the laws, as respectively applied to them; as, for example, in their affixing a different punishment to the same crime when committed by a native and by a foreigner: but this inequality we find counteracted by a special law, which ordained *crimes*, at least of various kinds, to be punished precisely in the same manner on both, Levit. xxiv. 10,—22. The circumstance of a stranger being stoned for blasphemy, gave occasion to this law. Moses took the opportunity of fixing the punishment of several crimes; and concluded by this declaration, *There shall be one and the same law for the native and for the stranger.*

ART. CXXXIX.

Of Naturalization—Who might and might not receive the Right of Citizenship among the Israelites.

§ 2. By the laws of Moses strangers were not absolutely, and in every case, precluded from all hope of naturalization among the people of Israel, or as he expresses it, of *entering into the congregation of Jehovah*. Only it could never take place immediately, in the first generation, and certain nations and descriptions of persons were so particularly excepted, that neither themselves nor their descendants could ever attain this privilege.

The statute on this subject stands in Deut. xxiii. 1,—9. Its meaning has been sometimes strangely misconceived, and the phrase, *entering into the congregation of Jehovah*, explained of marrying an Israelitish woman;

whereas that was never prohibited to a stranger ; and the passage, besides, among other descriptions of eunuchs, speaks of those, *quibus virga est abscissa*, and to whom, of course, it was unnecessary to apply such a prohibition.

Moses does not indeed expressly mention it on this occasion, but from the tenor of his other laws it is quite manifest, that whoever wished to become an Israelite, was obliged to submit to circumcision ; but whether any thing farther was requisite, such for instance, as the acquirement of some immoveable property in the land of Israel, I cannot, with certainty, affirm. If this was the case, it would imply, that a stranger might in two ways acquire, not only houses (for these he might buy) but lands likewise ; either by cultivating any spot before waste, of which there were many beyond Jordan, or by marrying an heiress, (see Art. LXXVIII.) of which in 1 Chron. ii. 34, 35. we have an example, in Jarcha, an Egyptian servant.

I must now divide strangers, in respect to their capacity of naturalization, into three classes.

1. By an express law of Moses, Edomites and Egyptians were declared capable of becoming citizens of Israel : they were not to be accounted unclean, and their *children in the third generation*, that is, the grand-children of those who had settled in Palestine, were to be admitted among the people of God, ver. 8, 9. Moses, at the same time, assigns the reason ; which, in regard to the Edomites, was, that they were next brothers to the Israelites ; and, in regard to the Egyptians, that the Israelites had long dwelt in their land.

We find likewise many examples of persons of both these nations, who seem actually to have enjoyed all the rights of Israelites, such, for instance, as Doeg the Edomite, 1 Sam. xxi. 8. Psalm lii; and when Idumea was conquered by the Jews, about 129 years before the birth of Christ, the Jews and Edomites became at last one people.

2. Of most other nations, no mention is made by name; and, therefore, I cannot, as to them, determine the point with certainty. It would seem, however, that they were not wholly precluded from incorporation with the people of Israel; for even Uriah, whom the history represents as a fully naturalized Israelite, was of Canaanitish descent, and is therefore commonly called *Uriah the Hittite*. Perhaps it was necessary that people of these nations should have adhered to the Israelitish religion and people, for more than *three* generations, before they could be naturalized.

3. Ammonites and Moabites, in consequence of the hostile disposition which they manifested to the Israelites in the wilderness, were absolutely excluded from the right of citizenship, and could not so much as attain it in *the tenth generation*, that is, could never attain it, ver. 4,—7.

Moses, moreover, excludes all eunuchs from this privilege, *quibus vel virga abscissa, vel testes exsecti, aut contriti*; probably to testify God's abhorrence of eunuchism, and to keep the Israelites from mutilating their children by that unnatural and barbarous practice.

It is, besides, generally asserted, that in ver. 3. of this chapter, Moses is to be understood as excluding *a bastard, even unto the tenth generation*, that is, for

ever, from entering into the congregation of the Lord. In the opinion, however, of at least the learned, both among Christians and Jews, this exclusion did not extend to all illegitimate children, but only to those of common prostitutes, whose venal favours are so indiscriminate that they cannot tell the fathers of their children; and it certainly was not impossible, that a legislator like Moses should, by reason of the infamy of their births, have excluded the progeny of brothels, with all their posterity, from the rights of citizenship. But, how common soever this opinion may be, and how strongly soever sanctioned by antiquity—for the Seventy, the Syriac, both the Arabic, and the latter Chaldee versions, render the original word in conformity to it—I nevertheless do not hold it to be well founded. It rests merely on the exposition of the unknown word מִמְזֵר, which they have pronounced *mamser*, and translated *Bastard*, by guess. That word occurs no where in the Hebrew scriptures but here, and in Zach. ix. 6. where it is at least equally obscure. We find it only in the writings of the Rabbins, who have taken it from the passage before us, and use it in the very sense, in which they here explain it. In the other languages of the East, it is not only quite unknown, but we cannot so much as find an etymology for it that is not too refined and artificial.

This word then, unacknowledged by the other Oriental languages, and, I had almost added, barbarous, I suspect has just as little right to be considered, in its present form at least, as a Hebrew word. Nor do I conceive that Moses wrote it in its present form, but that its letters should be separated, and pronounced

in two words, and with different vowels thus, מִם זָר *Mum Zar** ; which makes it mean, *the pollution of a stranger*, that is, a stranger who would be a disgrace or pollution to the people. In this case, it is nothing more than the general preamble to the subsequent statute, which excludes the Ammonites and Moabites *nominatim*. The reader may peruse the words of the statute in my version, and judge for himself. “ A stranger, who would pollute the people shall not enter into the congregation of Jehovah, no, not in the tenth generation. Ammonites and Moabites shall not enter into the congregation of the Lord, no, not in the tenth generation, nor for ever.—The Edomite, on the contrary, because he is thy brother, and the Egyptian, because thou sojournedst in his land, thou shalt not deem unclean, but their sons shall, in the third generation, be admitted into the congregation of Jehovah.” Would not the interpretation of מִם זָר, here given be more suitable to the context, than *bastard*, which is a mere guess, without the least support from true philology ?

It seems only necessary, therefore, to observe, in addition to the preceding detail, that Moses applies to the people of those nations, who could never be admitted to the rights of Israelitish citizens, the term of *polluted strangers*.

I here take the liberty to add a remark, which

* Here the question occurs to me, Do we find in no M. S. the first word written with a *Vau* in the middle, מוּם זָר ? This would confirm my opinion ; although, indeed, the *Vau* is not indispensable ; for *Mum*, a *stain*, may, as Hebrew Grammarians term it, be written *defectivé*, that is, without the *Vau*.

pretty much agrees with that now made, and which I found in my deceased father's Hebrew Bible. It is, indeed, in the main, altogether coincident with my own sentiments; only that my father could not so easily explain the letters מ, ז, מ, ז, as I can, because he certainly believed the vowel points to be ancient, and of divine authority, and consequently could not pronounce the consonants, *Mum Zar*. Compelled, however, at last, probably by want of evidence for the common explanation, which I had before heard him deliver in his lectures when at college, and by the terms of the context, he had, in the margin of the Hebrew Bible, which he used in his class, and in the hand which he wrote after he was 60 years of age, inserted the following words: "Inquiri meretur, tum quid
 " subjectum ממוזר, tum quid prædicatum לא יבא בקהל
 " ירוה proprie valeat. Quid? si ממוזר hoc loco generatim
 " sit αλλογενής, ut Zach. ix. 6. adeo ut Ammonitæ et
 " Moabitæ, ver. 4. species vel insignior sint ממוזר, vel
 " plane ממוזרים contra distinguantur, utpote cognati
 " Israelitis, posteris Abrahami, cujus nepotem ex fra-
 " tre, Lotum, conditorem gentis habuerant. Vide
 " notas uberiores ad Thren. I. 10. Sic igitur ממוזר idem
 " foret, qui נכרי Peregrinus." When I wrote the present article I had not read this remark of my father's, nor did I so much as conceive its existence, because I had heard the common explanation in his lectures. I only found it on consulting his Bible, to see whether it contained any confirmation of that explanation, with which I was myself unacquainted. But when I discovered that my father's opinion coincided in the main with my own, with this difference only, that the con-

text and his doubts led *him* to the very same idea, which I thought I perceived in the Hebrew letters, after rejecting the vowel points, I certainly felt myself confirmed in my conjecture, and considered that opinion to be the true one, in which both father and son had concurred, when they so little expected it, and were going in search of truth by two very different roads.

ART. CXL.

Of the Veneration paid to Old Age.

§ 3. MONTESQUIEU, I think, has remarked, that veneration for old age is peculiarly suitable to a democracy; but although he had not done so, the remark is nevertheless natural. In a monarchy or aristocracy, it is birth and office alone which gives rank. The more pure a democracy is, the more are all on an equal footing; and those invested with authority are obliged to bear in mind that equality. There great actions confer respect and honour; and the right discharge of official duties, or the arrival of old age, are the only sources of rank. For how else can rank be established among those who have no official situation, and are by birth perfectly equal?

After this remark, the Mosaic statute, Lev. xix. 32. *Before the hoary head thou shalt stand up, and shalt reverence the aged*, will perhaps be somewhat better understood, and found suited to the republican circumstances of the Israelites. It is indeed, in general, quite conformable to the nature and wishes of the hu-

man heart : for while we are all fain to be old, no man has any desire to sink in honour, or to be of less consequence than he was before ; and to allow precedence to old age, cannot be a matter that will ever affect a young man very sensibly : for he admits this chronological privilege, and desires not to be, or to appear older than he is. But in monarchies and aristocracies there arises from birth a new order of nobility, and which extends to the sons of those in official situations ; and then age ceases to confer dignity, quite happy, if, instead of veneration, it only experiences compassion.

ART. CXLI.

Laws respecting the Deaf and the Blind.

§ 4. To persons in these unfortunate situations, Moses grants the protection of a special statute, recorded in Lev. xix. 14. in which he prohibits reviling the one, or putting any stumbling-block in the way of the other. These are base and malicious tricks, and among us, without any law, and from the mere influence of national manners, are scarcely ever tried, but by boys, who are not under proper parental discipline. They must, however, have been common among the Israelites, because a particular law was required to check them.

Every nation has its peculiar vices and meannesses. The Englishman has his *quizz*, by which he often endangers his neighbour's life ; the German his ———, but I am not fond of satyrizing, and therefore leave

out what I meant to write ; another nation calls such things *youthful pranks*, and can scarcely conceive it possible they should be wicked.—The Israelites must, at the time when Moses gave his laws, have been very much addicted to malicious tricks upon those whose bodily defects *we* rather regard with peculiar pity and regret ; for among the curses (Art. LXX.) which the whole people were to pronounce on Mounts Ebal and Garizim, he found it necessary to include this, *Cursed be he who misleads the blind*, Deut. xxvii. 18.

We are to consider these precautions as flowing from that general principle by which the laws of every nation should be regulated, viz. that the legislator ought to have his attention specially directed to the peculiar vices and crimes of his people.

ART. CXLII.

Concerning the Poor—We must distinguish between poor Persons and Beggars—Moses, in his Laws, takes no notice of the latter.

§ 5. THE rights of the poor, for whose welfare Moses made several provisions, yet remain to be considered. By the word *poor*, however, I do not understand beggars properly so called—a class of men with whom Moses seems not to have been at all acquainted ; and I hope I may be here excused for making a digression, in order to develope more fully the distinction between poor and beggars.

Among the poor, then, I include all those who are poor in the proper sense of the word, although they

apply to none for relief, or but to a few people of their acquaintance ;—all those who have not enough to support them in a manner suited to their station, or are unable to carry on that business, by which they should be supported. Now, a man may be thus really poor, who, if we reckon by the number of *guldens* and *dollars* he possesses, has yet more property than another man, whom, considering his station, we might term in middling circumstances, or even opulent.—The man, for instance, whose office, according to custom and decency, subjects him to a certain expense, may have a larger income than many a common man, and yet be poor ; if, with the best œconomy in his power, he cannot subsist, and draw not in so much as is requisite for his expenditure. In like manner, the man of high birth, to whom, by education and habit for many years, certain articles reckoned luxuries (among which I shall only mention *wine*) have become indispensable necessities, but which he can now no longer procure ; and to whom, at the same time, in his own country, a sort of indelible character attaches, according to which he must live, and which keeps him from engaging in any meaner employment, in order to earn his bread ;—such a man is, unquestionably, poor, although with what fortune has still left him, a labouring man would live in opulence. So likewise, the great merchant or manufacturer, who, by misfortune, shipwreck, fire, or otherwise, is so reduced that he can no longer carry on his business, from the great capital it requires, may probably have a sum of money remaining, which to a day-labourer would appear great ; and yet he is poor, because such

a small sum is insufficient to set him a-going again, and must of course always be consuming, until at last he has nothing at all left. It will be obvious, that many poor persons of these descriptions are not beggars; and the point of honour renders it almost impossible for them to descend to mendicity. To take an instance from the Bible itself: David, although he was descended of a good family, and had hitherto lived at the court of Saul, whose daughter indeed he had married, was under the necessity of abandoning his all, when Saul threatened his life. In his exile, he was joined by others, who had been forced to flee from harsh creditors, 1 Sam. xxii. 2. These fugitives were all of them, doubtless, poor, but still very different people from our beggars.

By beggars I understand not those who sometimes solicit a friend, or a rich man, for aid: (for who calls such people beggars in common life?) but those who regularly make it their business to beg publicly, whether they at the same time work, and, only because their labour yields them not a sufficiency, supply what farther is necessary by begging; or, on the other hand, abandon themselves entirely to idleness; or again, are by age and disease incapacitated from working.

Among such people, no doubt, some are really poor, but others are not so, or, at least, not of that description of poor whom a legislator or benefactor of mankind ought to concern himself about. There are some of them who beg themselves into fortunes; for some years ago, a beggar died in England, who left behind him no less than four thousand pounds. Others again, have a pretty good living by their work,

but pretend poverty, or avail themselves of some bodily defect, as a pretext for making something additional by begging, that they may live still better. But by far the greater number are perfectly able to work, but like better to be idle, and find it more convenient to live upon the industry and deluded beneficence of others; and among them, begging is a regular trade, to which they actually bring up their children.

Such beggars are a burden upon the community, which no legislator ought in reason to tolerate. With regard to idlers, properly so called, this is perfectly obvious; and there is this very great evil to be taken into the account, that their example is infectious. In consequence of begging, they must come by degrees to lose all true sense of honour; and those who have once done so, are not very sound members of the community. The very loss of this principle, and the want of industry, makes their strength, though perhaps great, useless to the state, if in want of soldiers for war; so that they are maintained and protected, without contributing aught to its prosperity or its defence. Indeed the only use they make of their strength is worse than useless—it is dangerous; for mendicity is the nursery of theft; and real thieves, who belong to great gangs, reconnoitre the situation of houses in the character of beggars. During the prevalence of infectious diseases, they carry contagion with them from one part of a country to another; or, to specify a particular disease, which is perpetually raging among us, and yet is to every master of a family a very serious evil, against which the laws ought to protect him

more effectually, beggars, who can enter into every house with impunity, bring the infection of the small pox unseasonably into families. This, of itself, should be sufficient to cause stricter laws be enacted against their unlimited access to houses; for how defective are the laws, and how much are we, while subject to laws, debased below even the wild state of nature, when, in our houses, we are not secured against the intrusions of those who have legally nothing to do in them, and who may infect our families with a disease in which one generally dies out of seven, if he takes it unprepared? Allowing that it might be said, every person must, one time or other, have the small-pox, and it is all one whether he take them now or afterwards; still I must account it an intolerable violation of my natural right to a well-earned property, that every impudent beggar should with impunity intrude himself into my house, and infect myself or my family with a disease of which I am afraid. Whether my fear be rational or not, it is but reasonable that I should have *one* place wherein to secure myself against infection, and surely that should be my own house.—Nor must it be forgotten, by the way, that whoever dies in the small-pox, dies the sooner, the earlier he takes them. The objection, therefore, “You must have the small-pox once, and so I may bring them into your house to-day,” is much about as reasonable as if a man should enter my apartment, and thus address me,—“Say your prayers: you *must* die once, and it is all one, sooner or later. I mean to cut your throat this instant.”—But a physician will, besides, inform us, that it is by no means one and the

same thing, whether our children take the small-pox at present unexpectedly, or at a future period, when prepared for them. He will inform us, that at certain periods in infancy, as when children are otherwise diseased, or teething, the small-pox is peculiarly dangerous; that, in general, and at every age, the danger may, by a preparatory regimen, be considerably lessened; and that it is still more so, by the practice of inoculation, in which there dies only about one in five hundred.

Of those that are truly poor, and merit the compassion of others, but very few will ever be also beggars: the greater number will be restrained by the consideration of the place they have filled in society, and the feelings of honour they have still left; while those who are in the highest degree destitute, are by disease or decrepitude absolutely prevented from begging their bread from door to door. But, at any rate, vagrants who can travel about for miles, certainly have still ability to work; and our bestowing our alms upon such beggars, is an act of great cruelty to the aged poor, who can but creep a little way with difficulty. The man to whom every step is painful, and who cannot walk on the street without being in danger of either falling, or being thrown down, will, perhaps, have to make 288 solicitations in order to collect that *dollar*, which real compassion would have bestowed upon him at once, had not an ancient superstition, which looks upon giving to all beggars as a meritorious work of mercy, or a commandment of God, suggested the retailing it by single *pennings*. Thus the alms which we destine almost entirely to beggars, are,

in respect to the industrious poor who work, but cannot by their labour earn what is requisite to their subsistence, a very great abuse of benevolence, and, in a political view, a still greater evil. The man who appropriates, I will suppose, a *gulden* every week for alms, might, with that sum, relieve all the wants of two or three industrious poor, and make up to them, with their own labour, quite as much as they require for their support; but if, like other almsgivers, he divide it into 192 *pfennigs*, although almost all of them should by good luck come to real objects of charity, (which, however, is rarely to be expected, because sturdy vagrants, those robbers of the truly poor, who beg daily from house to house, will be sure to get the greatest part of them), still the poor man, who would willingly work, will be obliged to employ so much of his time in begging the *half-gulden* which is necessary to eke out his maintenance, at 96 houses, in which he gets a *pfennig*, and at still more from which he is driven away. He has it thus so much less in his power to do the work which he would otherwise have done; and consequently, the *half-gulden* is no longer sufficient for him, because he earns less than he might do by his labour; and so the almsgiver, who from superstition deems himself compassionate to the poor, is guilty of a piece of real cruelty, in thus interrupting his work, at least for one day in the week, or, perhaps, in making him take a liking to idleness. To men destined to labour, this last is a great misfortune; (for idlers are never contented) and it is at the same time completely ruinous to their moral character.

If this digression, which does not so properly be-

long to the Mosaic law, as to a treatise concerning laws in general, seem too long, or introduced in a wrong place, it may nevertheless be forgiven on this ground, that, in regard to this sort of almsgiving, which a magistrate ought not to tolerate, and which wise legislators have so often prohibited, it is commonly imagined that the Bible commands and requires it, and that it is a Christian good work. But it is indeed a good work of a strange kind. We are commonly exhorted to the practice of it, by the observation, that we should be stewards for God of the goods committed to our trust. But if this be true in the present instance, let us suppose the following case: A benevolent man of fortune establishes here in Göttingen, a fund of 100 rixdollars per annum, for a poor student of promising talents, and appoints me steward or administrator thereof, trusting that I will act conscientiously, and according to the spirit of the endowment. But if I no sooner get the money into my hand, than I exchange it for 2400 groschen, and to every one who comes into my house, and declares himself a poor student, I send a groschen by my servant, without troubling myself to enquire whether he be speaking truth or not; can it be said that I have faithfully administered the trust reposed in me? or am I not rather a thief, or, at any rate, a mis-spender of this charitable endowment?

But to return to Moses. He really seems to have had no beggars among his people, nor indeed to have previously expected any. Whether he at all knew of any such description of poor, I cannot tell; but I rather suppose he did, because Egypt could scarcely

have been without beggars. But thus much is certain, that the term *beggar* no where occurs in his writings, nor indeed in the whole Old Testament ; and I should not so much as know how to express it in Hebrew, unless I was to frame a word by the analogy of the language. The verb *to beg*, *בָּשַׁל*, likewise is not to be found at all in the Pentateuch : and but once in the Psalms, among the curses which David's enemies imprecate upon him, Psalm cix. 10. It is in the New Testament that we first find mention made of beggars ; not, however, strolling beggars, and such (to repeat it once more) as are able to work, but blind, diseased, and maimed poor people, who lay by the way sides, before the gate of the temple, and also at the doors of the rich, Mark x. 46. Luke xvi. 20, 21. Acts iii. 2.

Nor are some of the statutes or exhortations of Moses relative to the poor, at all applicable to beggars ; as, for instance, when he recommends it to their brethren to lend to them, on the ground that God will regard it as alms ; or when he enjoins that they be invited to certain feasts. These would indeed be very absurd laws if we had beggars in view ; and from these feasts at which it were necessary to have *them* as guests, the landlord would, in general, be very wishful both to absent himself, and to detain his family, not from pride, but for other reasons, if he was a rational and honest man. We should rather expect to meet with laws against mendicity and idleness ; but Moses gave no such laws ; for, in fact, he seems not to have had any mendicants among his people. The plan of earning one's bread by the profession or art of begging was

perhaps not discovered in the infancy of mankind,] or at any rate, of the Israelitish nation.

Moses found the people almost in a state of universal equality, as nations are wont to be, when they have lately emerged from the state of nature. In general, no man was much richer or poorer than another; and in such a case, a person must be averse to beg, partly from thinking it disgraceful to ask alms of his equal, and partly because it would be the height of impudence, as well as folly, to solicit charity from those who have no more than ourselves, and will without ceremony refuse it. They find themselves obliged to work, and to their neighbour who wishes to beg, instead of an alms, they will naturally give an advice, to do the same. In process of time, however, as wealth and luxury increase, the difference of circumstances among a people becomes greater. We then find, 1. some very opulent; 2. others in comfortable circumstances; 3. others again but in a middling way; and, to omit some intermediate classes, 4. others extremely poor. When great cities arise, in which numbers of the three first classes are collected, so that it becomes worth the poor man's while, as well as the idler's, to go about in quest of alms, then the art of begging is discovered, and the number of those who find it convenient to resort to it, will soon increase, especially in large towns, which attract the idlers and beggars of the whole country, and indeed serve as seminaries for the education of both. I must, however, here remind the reader, that Palestine had originally but small towns, (Art. XXXVIII.) and consequently, for a considerable time

after Moses, and until the cities, from accidental causes, became great, beggars there had by no means a soil suited to make them thrive in, unless, perhaps, on some of the principal roads, such, for instance, as those leading to the place where the tabernacle was erected, or to the fords of the river Jordan. And these may very possibly have been the places, in which the lame and the blind took up their quarters for the purpose of begging alms, if the police permitted them. In the East, objects were generally excluded from sacred places; and the beggar who, 2000 years after the period of which I now speak, lay at the gate of the temple (Acts iii. 2.), was placed without the court of the Israelites, in that of the women.

If we trace back the history of most nations to their ancient state of general poverty, we shall find, the farther back we go, that beggars more and more decrease, until they almost totally disappear *in statu naturæ*. Perhaps instead of them we may occasionally meet with an account of some brave man, who, by the labours of his hands, could scarcely earn bread enough for himself and his children, and was actually under apprehensions of starving, when, to save his country, he was called from the plow to the dictatorship.

We must farther recollect, that Moses gave a portion of land to every Israelite, which remained with his family in perpetuity; and the man who has such a property will not be apt to commence beggar. It is true, that a hail-storm, or other misfortune, might reduce him to the necessity of applying to his neighbours for their aid—although indeed he might borrow on the credit of his land and its future crops—but he would

not thereby become a beggar by profession : for from *that* his land and its culture would certainly keep him.

Besides, slavery was in use among the Israelites, nor did any disgrace whatever attach to it, because it did not deprive a Hebrew of his native rights. Now this served to repress begging very effectually ; for the idler or spendthrift, who contracted more debts than he could pay, was sold ; and to the idler who had a mind to go about begging, the man of substance would immediately make this proposal, “ If you have nothing to live upon, I am ready to buy you for a servant.” This plan, while it aided the industrious to earn their bread, would frighten vagrants very thoroughly ; for you have only to shew them work, even at a distance, and they instantly vanish.

If it be asked, whence it comes that the profession of beggar has become so common among us, the cause is, without doubt, to be sought partly in our great cities, in our luxury and wealth, and in the disproportion that exists between the circumstances of individuals ; but it is chiefly owing to those mistaken ideas of morality, which we have still remaining since the times prior to the reformation. Begging was then a sacred profession, and to give alms to beggars, a good work of pre-eminent merit : and of this old prejudice so much still remains, that most people, when they hear charity and mercy preached up, immediately entertain the idea of alms given to beggars ; and we early impress the minds of children with the maxim, that it is cruel to send beggars away unrelieved, while yet we forget to say a word of the more important

duty of ascertaining the characters and wants of those beggars, that what can be spared for the truly poor may not be squandered upon vagrants. As long as the preachers inculcate upon youth no better doctrine on the subject of charity, and fail to tell them, that alms wasted on idlers and impostors without examination, is a sort of sacrilege against the real poor ; that it is an act of benevolence to take some trouble in making the proper distinction between the two ; and that to deal out paltry alms indiscriminately to all comers alike, without deigning to make inquiry, is nothing better than pride and supercilious contempt of the poor ; so long will the magistrate strive in vain to check the great evil of mendicity by wise and just laws. If he prohibit what we hear, from infancy, extolled as a work of religion, and what besides is a much more easy matter than giving charity after due inquiries, he will only add to the influence of the people's mistaken ideas of convenient religion, and attract new swarms of beggars, to his own loss and that of the community.

That the preachers obstruct the good intentions of the magistrate, by an irrational doctrine, certainly not founded on scripture, proceeds, in most cases, from this cause, that they have not had a proper university education, but, as the phrase is, have merely *studied the preacher*, the evil of which practice is very great.

ART. CXLIH.

Laws and Exhortations given by Moses, together with ancient usages, in favour of the Poor.

§ 6. To take no more notice therefore of beggars, but only of the poor properly so called, I proceed to observe, that Moses was very anxious to promote their interests, and made various regulations and provisions in their behalf. For, although by his statutes relative to the division of the land, he had studied to prevent any Israelite from being born poor, (Art. LXXIII.) yet he was not such a Platonist in legislation, as to hope, that there would actually be no poor; for he expressly says, Deut. xv. 11. *There shall always be poor in the land; therefore I command thee to open thine hand to thy brother, and to the poor and needy in thy land.*

His general exhortations to beneficence, such as those in regard to the affording of protection to an Israelite reduced to poverty, I overlook, because they belong not so properly to civil jurisprudence, as to morals. For when a legislator merely exhorts, without specifying what every one is to do, the magistrate can exercise no controul, but must leave it to a man's own sense of propriety, to determine how far he will regard the exhortations given.

But the exhortation in Deut. xv. 7,—11. to assist the decayed Israelite with a loan, and not to refuse, even though the sabbatical year drew nigh*, is some-

* During the sabbatical year, a creditor could not dun his debtor, but the debt was not therefore lost. He had only to wait another year.

what more directly connected with jurisprudence, and, as it were, holds an intermediate place between a statute and an exhortation. Thus much, at least, is clear, from our very first ideas of justice, that no legislator can give such an exhortation, whose law affords not to a creditor sufficient security, and very summary execution—which the Mosaic law does, as we shall see in the sequel—for where the laws are too mild on behalf of debtors, their effects are very unfavourable to the poor, because nobody will lend them aught, but rather give them a trifle in alms.

A statute, however, which, while it thus exhorts to lending to the poor, declares it, as in ver. 9. *baseness* to refuse, has actually an effect beyond that of mere exhortation: for it attaches to the refusal, a degree of civil infamy, and a reproach, against which there is no legal redress; and it also gives to the magistrate a right to enforce it by oral admonition.

Beyond this I do not conceive that the meaning of the passage before us is to be extended, or that it is, strictly speaking, a compulsory statute, at least in ordinary cases. It is true, that in times of war, and of extreme necessity, we have recourse to forced loans, which, from every man who has money, may be extorted by legal execution. But of these, Moses does not appear to speak; for he neither specifies how the magistrate was to set about finding out those who, though they had money, might be unwilling to acknowledge it, nor yet how they were to be compelled, nor, in a word, what he was at all to do in the business. He merely confines himself to exhortation, and is satisfied with observing in another passage, that God would regard a

loan given without a pledge as *charity*, Deut. xxiv. 13. This expression is extremely well suited to the case ; for, in fact, a loan which we have duly repaid, or indeed for which we have sufficient security, will often be a far greater kindness than an alms properly so called ; because *that* is, in general, too small to enable an unfortunate man at all to retrieve his affairs, and carry on his business.

By the Israelitish law, a creditor had, without exacting any pledge, such security on his debtor's land and its crops, and even on his person, which he might sell to extinguish the debt, that the exhortation of the legislator to lend was far from unjust or overstretched ; and in cases of real and manifest necessity, considering the nature of these securities, no legislator could be justly blamed for having recourse to the enforcement of a loan, even by direct legal compulsion.

But from these exhortatory admonitions, I must now distinguish three express statutes, wherein Moses made certain provisions for the benefit of the poor.

1. During harvest the owner of a field durst not reap the corn that grew on the extreme corners, nor yet the after-growth, but was obliged to leave it for the poor ; nor was he allowed to gather the scattered ears, or even to fetch the sheaves once carelessly left on the ground ; for both belonged to the poor, by the right of gleaning. It was precisely the same in the vineyards, olive-grounds, and, probably, fruit-gardens, in general. The poor had a right to the gleanings ; and after a man had once shaken, or beat, his olive-trees, he durst not gather the olives that still hung upon them ; so that the fruit that did not ripen till

after the season of gathering, belonged to the poor ; Lev. xix. 9, 10. Deut. xxiv. 19, 20, 21, Ruth ii. 2, —19.

It is probable that regulations of the like humane nature were already established by custom before the time of Moses. Job describes the poor as *gathering the harvest-dew in the vineyard of the unjust*, chap. xxiv. 6. It would therefore appear, that even austere and unfeeling men, when the vintage was past, allowed the poor to collect the grass in the vineyards for food to their cattle, and that as October advanced, the property of the growth in vineyards gradually ceased ; only, that the expression, *vineyard of the unjust*, implies withal, that there would not be much to gather but the grass, because he would scarcely leave any gleanings of the unripened grapes for the poor.

Mahomet, in chap. vi. of the Koran, v. 142. perhaps alludes to a similar right enjoyed by the poor among his Arabs, when, after extolling the divine goodness in the production of corn, dates, pomegranates, olives, and other fruits, he adds these words, *Enjoy these fruits ; but in harvest and vintage give to the poor their right : yet go not too far in this way*, (that is, give not away from ostentation or superstition more than you can spare without inconvenience,) *for God loves not squanderers*. Although indeed it is not impossible, but that what is here called the *poor's right*, should be understood of some special gift bestowed on them at this season.

2. Whatever grew during the sabbatical, or fallow year, in the fields, gardens, or vineyards, the poor might

take at pleasure ; for they had an equal right to it with the owners of the land, Lev. xxv. 5, 6.

3. Another important benefit which they enjoyed was, what were called *Second Tenths* and *Second Firstlings*, concerning which I shall have occasion to speak fully in the sequel ; but I must at present make some few remarks, that the nature of that benefit may be understood.

Besides the tenth which the Levites received, (Art. LII.) the Israelites were obliged to set apart another tenth of their field and garden produce ; and, in like manner, of their cattle, (exclusive of the first firstlings brought to the priest,) a second set of firstlings, for the purpose of presenting as thank-offerings at the high festivals. These thank-offerings were not wholly burnt, but only certain fat pieces. The rest, after deducting the portion destined to the priest, was appropriated for the sacrifice-feasts, and such the greater sort of entertainments among the Hebrews commonly were. When, of these tenths, any part remained, which they had not been able to bring to the altar, or to consume as offerings, (for these could only be made at that particular place of the land where the sole altar stood,) they were obliged every three years to make a conscientious estimate of the amount, and, without presenting it as an offering to God, employ it in benevolent and festive entertainments in their native cities. To these entertainments, as well as to the sacrifice-feasts, the Israelites were bound to invite, besides their children and their servants, who were their sharers in the festivals on such occasions, *the stranger, the widow, and the orphan* ; and, as the Mosaic phrase literally

imports, *rejoice with them before the Lord**. The statutes on this point stand in Deut. xii. 5,—12, 17,—19. xiv. 22,—29. xvi. 10, 11. xxvi. 12, 13. The three last of them expressly mention only *the stranger, the widow, and the orphan*. But, with regard to *the stranger*, I must remind the reader, that, while a person of foreign descent, if he had submitted to circumcision, was not excluded from sharing in these festivities, the term likewise comprehended those poor Israelites who had sold both house and land; for them Moses regards as strangers, and in Lev. xxv. 35. commands their brethren to take care of them, that they may still be able to live *as strangers* in the land. The word *stranger*, therefore, includes here almost all the poor that were not widows and orphans; and to all such persons Moses, in these laws, ordains to be given, not a humiliating pittance of alms, but a friendly invitation to a festive entertainment; still, however, so, that the host had the *choice* of the guests of this description, whom he might think fit to ask. Now, this is, in fact, a nobler sort of beneficence towards the poor. Common charity thinks only of giving them daily bread, to keep them from starving; but human nature requires, besides, some comforts and delights; and whoever is acquainted with it will admit, that a single day's enjoyment of a little superabundance, for which previous want gives a peculiar relish, affords it far more satis-

R 2

* That is, make a joyful feast with them. *Joy*, in Hebrew, and even in the Gospel of Matthew, means a feast. *Go thou in to thy master's feast*. Of this, we shall have occasion to say more afterwards.

faction than its every day's regular supply of the bare necessities of life, and its never knowing hunger ; for dull uniformity, even of good things, does not suit its taste : It loves variety, as physicians, in treating of Dietetics, always tell us. But without minding them, if we only listen to the voice of our wishes, we shall readily grant, that ten days, without enough of meat, is not half so great an evil, as one day's feasting is a good.

If I am not mistaken, Christ, in the moral doctrine which he delivers in Mark xiv. 12,—14. directly alludes to those entertainments, which might be said to be a sort of alms, but still of a beneficent and generous description ; for in the case of other entertainments, we do not ordinarily make any claim to reward in a future world, but merely to friendly enjoyment in the present ; and the sabbath-day's feast, to which, with no good design, the Pharisee had on this occasion invited Jesus, may have itself been a feast of tenths and firstlings.

Independent of these statutes, the humanity of established usage seems to have given to poor persons, as well as to those in better circumstances, a sort of half-right to a feast or a present, where a man of substance had a considerable income. At least Mahomet, in chap. iv. v. 9. of the Koran, presupposes it well known, that at the division of an inheritance, besides relations, there were present orphans, and poor persons ; and he exhorts the faithful to treat them hospitably, and meet them as friends *. Something of

* “ When the relations, the widows, and the orphans, and the
“ poor assemble at the division of the inheritance, entertain them

the same kind must have been common among the Israelites, and not accounted dishonourable. David (1 Sam. xxv.) sent messengers to Nabal, who is described as a man of opulence, to wish him good luck of his sheep-shearing, and to request withal, that, on that joyful occasion, he would send him a present; and, in the expectation that it would not be a light one, and out of politeness, that Nabal might not have the trouble of sending it by his own servants, he dispatched ten of his best hands to carry it. Nabal, however, paid but little regard to the usual custom, and answered the messengers with such insolent language, as, from David's not being the man to submit patiently to the insult, had well nigh occasioned bloodshed. David's conduct on the occasion was very precipitate; but it admits, as well as the whole story, of an easy explanation, if we suppose, that there might have subsisted among the Israelites, a poor's right, such as Mahomet found among the Arabs. Had Nabal been unwilling to send any thing to David, he

B 3

well, and meet them as friends." Whether the relations came to divide the inheritance, (because no son happened to be alive) or merely to eat with him on the occasion, Mahomet does not indeed say; but the latter, from what I know of the customs of the Arabs from their ancient poets, is to me the more probable supposition. And if the passage quoted from chap. vi. 142. of the Koran, under No. I. of the statutes mentioned in this Article, be not understood of gleaning on the fields, it applies to the usage now under consideration, and imports, as I have already hinted, a command to give a charitable donation to the poor during harvest,

might, at any rate, as Mahomet expresses it, have met the messengers, (who were in rank quite his equals) *in a friendly manner*, and ought not to have insulted them.

CHAPTER XII.

OF PERSONAL RIGHTS AND OBLIGATIONS.

PART I.—OF VOWS.

ART. CXLIV.

Of Vows in general, and considered as binding, and acceptable to God.

§ 1. UNLESS the Deity has expressly declared his acceptance of human vows, it can at best be but a very doubtful point, whether they *are* acceptable in his sight; and if they are not so, we cannot deduce from them the shadow of an obligation; for it is not from a mere offer alone, but from an offer of one party, and its acceptance by another, that the obligation to fulfil an engagement arises. The divine acceptance of vows, we can by no means take for granted; considering that from our vows God can derive no benefit, and that, in general, they are of just as little use to man. Suppose a person were to make a vow to God, which involved the commission of a crime; that he would commit adultery, for instance, or be guilty of regicide, of which the Polish history furnishes an example; is it to be imagined that the Deity would

accept such a vow? None but a miscreant, or blasphemer, would venture to say so: indeed, the very idea were horrible. In Matth. xv. 4,—6. Mark vii. 9,—13. Christ himself notices a vow common in his time, whereby a man *consecrated* what he was bound to apply to the support of his parents; and he declares it as so impious, that we cannot possibly hold it as acceptable to God. (See Art. CCXCIII.) But, independent of this exception, there is quite enough besides, to give such a deep wound to the validity of vows, as to render it doubtful whether they can ever be obligatory. For, a great many of them, before the tribunal of philosophical morality, might, perhaps, be arraigned as directly sinful; such as that of letting a light, which would be useful to man, needlessly burn in an empty vault, to annoy the owls; that of annually devoting to alms, or (much to their own and to society's loss) to the support of idlers, a certain sum, which, should circumstances change, would become more necessary to our nearest relations; or that of abstaining from marriage, or, in other words, resisting the impulse implanted in our nature for the wisest purposes by the Creator, and contributing all in our power to prevent the propagation of the human race.—Even fasting, if it take place weekly, and consist of real abstinence for a day from meat and drink, is regarded by experienced physicians, as a slow sort of suicide*. It may not, perhaps, directly produce diseases; but the

* See *Richter de Jejuniorum Noxis*, Gött. 1752. This Dissertation, which had become very scarce, is again printed in *Geo. Gottl. Richter Dissertationes Quatuor in usum Theologorum et Philologorum*, Gott, 1775.

old age of the body, that is, the collapse of the vessels which elaborate and convey the juices, will come on earlier; the consequence of which is death; not of disease, but of *senile atrophy*.—A lady, in a hasty moment, vows never more to wear lace; but in a country where many people subsist by lace-knitting, if dearth and famine take place, (of which we had an example in such a country last year*) what is this, but to vow to God to deprive the most industrious and worthiest of the poor, of the best-bestowed alms?—In fine, this doubt may arise in our minds,—and unless the Deity has expressly revealed his mind on the subject of vows, it is highly rational,—that what we vow, either *is* the best thing we could do in such circumstances, or is not. In the former case, it is our duty at any rate; for the presumable will of God is, *Do what, according to your knowledge, is best*. In the latter, it is sinful to do what, perhaps, some years after the vow has been made, we no longer recognize as what *is* best.

These are all considerations which, in points of theological and philosophical morality, we may and ought to contemplate; and it certainly appears that, in the New Testament, no vows whatever are obligatory, because God has nowhere declared that he will accept them from Christians. But the people of Israel *had* such a declaration from God himself; although even *they* were not counselled or encouraged to make vows. In consequence of this declaration, the vows of the Israelites were binding; and *that*, not

* 1775 in Saxony, particularly in the mining district, (*Erzgebürge*.)

only in a moral view, but according to the national law; and the priest was authorised to enforce and estimate their fulfilment. The principal passages relating to this point, are Lev. xxvii. Numb. xxx. and Deut. xxiii. 18, 21, 22, 23.

I have yet to add two general remarks: *First*, in the Mosaic laws, no peculiar favour to vows is manifested, nor yet any peculiar disapprobation of them. To the lawgiver, and even to God, who sent him, it would seem to be pretty much the same thing whether a person vowed, or vowed not, Deut. xxiii. 21,—23. He nowhere exhorts to the practice, and sometimes speaks of vows as if they might be rashly made; and later books of Scripture contain even warnings against rash vows, Eccl. v. 1,—6. Moses appears to have retained them as an ancient usage among his people; only taking care that the *jus tertii*, the rights of a father, or a husband, should not be affected by them; and that, where rashly made, they should not become too burdensome; and with this view, ordaining an authority, for the purpose of alleviating and buying them off. This is nearly the spirit of his law. Of many vows that became common in later times, he had not even an idea, and, of course, could enjoin nothing respecting them. The most common vow, of which he often speaks *en passant*, and which he presupposes as known*, was the promising of an offering to God,—a sort of vow which we can now no longer make. By other vows, either something was

* Lev. vii. 16. xxii. 23. xxiii. 38. Numb. xv. 3,—8. Deut. xii. 6, 11, 17.

presented as a gift to God, who had then a visible sanctuary and priests ; or else, there was promised a piece of self-denial, uninjurious to the common wealth, and, in general, not of perpetual endurance. It was to a people who made vows of this sort, that Moses gave his laws ; and not to one ever likely to approve of young women devoting themselves, by vow, to perpetual virginity.

Secondly, These laws he gave in the name of God, and by his command ; and hence, in respect to vows, they have a remarkable advantage over our laws.—God alone can *authentically* declare, whether or not he will accept vows ; and if he does accept them, though but on the footing of condescension and benignity, and under all the variety of limitations and exceptions soon to be mentioned, they serve to give peace to conscience. But a legislator not authorized by God, can allow nothing in God's name : He may, indeed, and it is his most prudent plan, give himself no trouble at all about vows, so long as they do not violate the rights of any other individual, or of society, and leave the question of their obligation entirely to the moralists and to conscience ; but then, to a troubled conscience, he can by no absolutions administer relief, nor can he prevent the evils which rash vows sometimes occasion in domestic affairs, in such a way as to set conscience at rest. These are the prerogatives of that legislator alone, who speaks in the name of God, and proves, by miracles, that he has a right to do so. Here, however, with the truth of the point, I am not concerned, but only with its hypothetical lawfulness ; because I speak of vows, not as a theologian, but on

the principles of general jurisprudence. If a Protestant prince were to make laws relative to vows, *he* would, no doubt, have it quite in his power to say what judgments should be pronounced *in court* concerning them ; but *to conscience*, whose weaknesses and caprices we must not attack, unless we chuse to risk the introduction of greater mischiefs, he would be unable to administer any peace or consolation, when it happened to be dissatisfied with his remissions. He will, therefore, act most rationally, in leaving this matter with the preachers, who, if they are not superstitious, must be ever instructing the people from their infancy in this most important doctrine : “ All your
 “ vows are absolutely no farther binding, than as to
 “ what, without vows, is your duty, and commanded
 “ by God ; and this will ever be true, so long as you
 “ find, in the New Testament, no evidence of their
 “ acceptance on his part.”—A Catholic legislator, again, will, in giving laws relative to vows, succeed more or less easily, according as he happens to be supported or opposed by the spiritual power ; for the Pope, or the person to whom *he* delegates his authority, can, in the name of God, with the greatest ease, accept or remit vows, and likewise establish the solemnities under which they shall or shall not be valid. And thus the consciences of the people will be at rest, as long as they believe the Pope invested with authority from God for this purpose : Only, if they should happen ever to inquire, whether he had ever confirmed his claim thereto, by such miracles as those by which Moses proved *his* authority to give laws in

the name of God, the peace of their consciences would, from that moment, be at an end.

ART. CXLV.

It is an essential requisite in a Vow, that it be orally expressed—The different Sorts of Vows—Jephtha's Vow considered.

§ 2. MOSES seems to require it as essential to the validity of a vow, that it be actually uttered with the mouth, and not merely made in the heart. In Numb. xxx. 3, 7, 9, 13. and Deut. xxiii. 24. he repeatedly calls it *the expression of the lips*, or, *what has gone forth from the mouth*; and the same phrase occurs in Psalm lxvi. 14. If, therefore, a person had merely made a vow in his heart, without letting it pass his lips, it would seem as if God would not accept such a vow; regarding it only as a resolution to vow, but not as a vow itself.

This limitation is humane, and necessary to prevent much anxiety in conscientious people. If a vow made in the heart be valid, we shall often be difficulted to distinguish whether what we thought of was a bare intention, or a vow actually completed. Here, therefore, just as in a civil contract with our neighbour, words—*uttered words*—are necessary, to prevent all uncertainty; which would be the more tormenting, because, *in the first place*, it is not a fellow-creature before our eyes, who might remit somewhat of his right, or before whom we might plead our poverty, that urges the fulfilment of a promise, or, if he does

not urge it, by his silence virtually remits his dubious right ; but it is conscience, even doubting conscience, that, in the name of the invisible God, with whom we can hold no verbal converse, demands the discharge of a troublesome vow, probably never in fact made, and to all our objections only replies by awful silence. —In the *second* place, for want of words plainly uttered, we cannot properly know what and how much it was, that, under the influence of passion, we had rashly promised to God. In both cases, the conscientious man believes, that where there is any doubt, he ought to speak *for* God, and *against* himself ; at least, that this will be his safest plan ; and hence it comes, that he often performs things quite unreasonable, and *that* with very great hardship, or else is discomposed and tortured with an erring conscience. With persons peculiarly conscientious, the evil proceeds considerably farther. Being at the same time, perhaps, of a hypochondriacal cast, they mistake whims that come involuntarily and suddenly into their minds, for vows ; they cannot distinguish between what they would, and what they would not ; just exactly as many people, about fifty or a hundred years ago, found themselves grievously oppressed with *spiritual trials*, as they were called, and were filled with anguish on account of blasphemous thoughts which Satan was said to suggest. Books were written about this, which still sometimes appear in auctions, under the title of *Tela ignita Satanæ*. Divines, too, treated of these high trials, and gave advices as to the best plan for encountering Satan ; which, if collected together, might, with the greatest propriety be intituled, *Ad-*

vices how to have *Blasphemous Thoughts hourly and momentarily in the Mind*: for the more pains a man takes to guard against any idea which he regards with peculiar horror, the more apt will it be to intrude. The strange sound, *Xaldnipter*, till this moment never once came into my mind; and now I merely contrive it, for the sake of an example; but if any one were to predict, and I were to believe it, that I should be seized with a cancer, that very hour in which the sound *Xaldnipter* came five times into my mind, I should, while awake, think, and while asleep, dream, of nothing else than *Xaldnipter*; and just in the same manner, if a man believes that he commits a sin whenever a blasphemous thought intrudes on his mind, he will be sure to be perpetually haunted with such thoughts; and he who once begins to fancy that ideas of vows, to which something within him says, *Aye, are* vows, and obligatory, will never be secure against foolish vows. The matter will thus become a real and serious mental distemper: and however determined he may be in his heart to say *No*, to all such ideas, he will yet be continually harassed with the fear of having made vows that must be fulfilled; just like a very good friend of mine, a Frenchman, living in Germany, and very zealous for the purity of his language, who advised his countrymen, at every Germanism they heard, to give a snap with their fingers in their pockets, or to think of some nonsense.—Against this evil, which really tortures many thousands in secret, there is no better antidote than absolutely to regard no vow as valid, that is not uttered aloud,

and to which conscience is not plainly a party to its full extent.

Moses twice (viz. Numb. xxx. 10, and 13.) mentions the swearing of an oath along with vows; but for such vows he ordains the same privileges and allowances as have place in cases of common vows. It appears, therefore, that the oath makes here no difference as to rendering the vow more sacred; for as God, according to his authentic declaration by Moses, may dispense with the vow, so may he also with the oath.

But, on the other hand, one species of vow called *Cherem*, (for which, in German, we generally use the terms *Bann*, *Verbannen*, &c; but in a thing altogether foreign to us, I rather chuse to abide by the Hebrew word,) was, from ancient usage, more sacred and irremissible than all others. Moses nowhere mentions what *Cherem* was, nor by what solemnities or expressions it was distinguished from other vows; but presupposes all this as already well known. But from Lev. xxvii. 21. every one must see, that there was a difference between a *Cherem* and other vows; for if a man had vowed his field, and omitted to redeem it, it devolved unto God in the same way as the *field of Cherem*, for ever, and beyond the power of future redemption; and in ver. 28, 29. it is expressly ordained that a *Cherem* can never be redeemed like other vows, but continues consecrated to God; and if it be a man, that he shall be put to death. I have already stated, that of the formalities which distinguished the *Cherem* from common vows, we know nothing; nor

does the etymology of the term at all aid our conjectures, for the radical word in Arabic means, *to consecrate*; but every thing *vowed* or devoted, was consecrated.

The species of *Cherem* with which we are best acquainted, was the previous devotement to God of hostile cities, against which they intended to proceed with extreme severity; and *that* with a view the more to inflame the minds of the people to war. In such cases, not only were all the inhabitants put to death, but also, according as the terms of the vow declared, no booty was made by any Israelite; the beasts were slain; what would not burn, as gold, silver, and other metals, was added to the treasure of the sanctuary; and every thing else, with the whole city burnt, and an imprecation pronounced upon any attempt that should ever be made to rebuild it. Of this the history of Jericho (Josh. vi. 17,—19. 21,—24. and vii. 1. 12,—26.) furnishes the most remarkable example. In Moses' lifetime we find a similar vow against the king of Arad, Numb. xxi. 1,—3. The meaning, however, as we see from the first mentioned example, was not, that *houses* might *never* again be built on the accursed spot: for, to *build a city*, here means, *to fortify it**. Joshua himself seems to explain it thus; for

VOL. II.

S

* This signification of the word is by no means uncommon in Hebrew and Syriac. For example, 1 Kings xv. 17. the king of Israel (Baasha) *built* Rama (a city which is mentioned in the history long before) in order to confine Asa king of Judah within his own borders. Here it is clear, that nothing else can be meant, than that he fortified a city, that had been previously built. In the *Edessene Chronicle*

in his curse he makes use of this expression, *Cursed be he who rebuilds this city Jericho ; for his first-born son shall he found it, and for his latest, set up its gates.* The beginning, therefore, of the building of a city, is to *found it* ; which can hardly be to lay the foundation stone of a single house, (for who, whether Hebrew or not, ever called *that* founding a city?) but of the city walls ; and its *conclusion*, is to set up its gates. The history still farther confirms this, as the meaning of the term *to build* ; Jericho was so advantageously situated for all manner of trade, because near the usual passage across the Jordan, that it could not long remain a place entirely desolate. In fact, as early as the time of the Judges, Jericho, or, as it was then called, *the city of palms*, appeared again as a town, subdued by the Moabites ; (Judg. iii. 13. compared with Deut. xxxiv. 3.) and in David's time, we have unquestionable proof of the existence of a city of the name of Jericho, see 2 Sam. x. 5. But notwithstanding all this, Joshua's imprecation was not yet trespassed ; but, at least 100 years after David's death, Jericho was first *rebuilt* (that is, fortified) by Hiel the Bethelite ; and in laying its foundation he lost his first-born son, and in setting up the gates, his youngest, 1 Kings xvi. 34.

(see p. 53, 54. of my *Syrian Chrestomathy*) it is related that Constantine *built* Amida, A. D. 349 ; although that city had long before appeared in the history, and Constantine then only fortified it against the Parthians. It is also said, that in A. D. 350, he built Tela, *which was before called Antipolis*. Here it is plain, that the city was not newly founded, but only fortified ; its previous name being expressly mentioned.

If an Israelitish city introduced the worship of strange gods, it was in like manner to be devoted, or consecrated to God, and to remain unrebuilt for ever; Deut. xiii. 16,—18. But of this more in Art. CCXLVI. under *criminal law*.

In these cases, therefore, *consecrated*, or *devoted*, is nearly equivalent to the Latin phrase, *ejus caput Jovi sacrum esto*, or *sacer esto*. The consecration of the transgressor to God made the remission of his punishment impossible; and might, in democratic states, be useful, in preventing delinquents, that happened to enjoy popular favour, or contrived to excite public sympathy, from escaping punishment. Hence, where it was of very material importance, that a law should be kept inviolate, the aid of vows and of religion was called in by legislators; as by Moses, in the case of Polytheism, the prohibition of which (see Art. XXXII.) was one of the two fundamental maxims of his polity; and by the Romans, to secure the safety of the *Tribunes of the People**. It is easy to perceive, that this master-piece of legislative policy ought never to have its importance lessened by an injudicious application to common crimes, that do not affect the principles of the constitution: and therefore, so much the greater was the abuse which Saul made of the

s 2

* Livy iii. 55. ——— *ipsis quoque Tribunis, ut sacrosancti viderentur, cujus rei prope jam memoria aboleverat, relatis quibusdam ex magno intervallo ceremoniis renovarunt; et cum religione inviolatos eos, tum etiam lege fecerunt. sanciendo, ut qui Tribunis plebis—nocuisset, ejus caput Jovi sacrum esset, familia ad Ædem Cereris Liberi, Liberæque venum iret.*———

Cherem, when, in issuing an arbitrary inconsiderate order, he swore that whoever trespassed it should die ; this was, in fact, making the offender against his whim, a *Cherem* : and accordingly we see, that the people did not mind the oath of their king, but insisted on saving Jonathan, whom, because he had eat a little honey, his father had devoted to death, 1 Sam. xiv. 24,—45.

But a still grosser abuse of the *Cherem*, proceeding from imitation of foreign and heathenish practices, we shall probably find in the history of Jephtha, Judges, chap. xi. This brave barbarian, an illegitimate child, and without inheritance, who had from his youth been a robber, and was now, from being the leader of banditti, transformed into a general, had vowed, if he conquered the Ammonites, to make a burnt-offering to the Lord of whatever should first come out of his house to meet him, on his return. This vow was so absurd, and at the same time so contrary to the Mosaic law, that it could not possibly have been accepted of God, or obligatory. For, what if a dog or an ass had first met him ? Could he have offered *it* ? By the law of Moses no unclean beast could be brought to the altar ; nor yet even all clean ones ; but of quadrupeds, only oxen, sheep, and goats. Or, what if a man had first met him ? Human sacrifices Moses had most rigidly prohibited, and described as the abomination of the Canaanites ; of which we shall afterwards say more, under criminal law : but Jephtha, who had early been driven from his home, and had grown up to manhood among banditti in the land of Tob, might not know much of the laws of Moses, and probably was

but a bad lawyer, and just as bad a theologian. The neighbouring nations used human sacrifices : the Canaanites, especially, are by Moses and the other sacred writers often accused of this abominable idolatry, of which we find still more in the Greek and Latin authors* ; and possibly, therefore, Jephtha, when he made the vow, may have thought of being met not merely by a beast, but by a slave, whom, of course, he would sacrifice, after the heathen fashion. His words are, “ If thou givest the Ammonites into my hands, “ whatever first cometh forth from my house to meet “ me on my happy return from the Ammonites, shall “ be the Lord’s, and I will bring it to him as a burnt- “ offering.”—Most unfortunately, his only daughter first came out to congratulate him : and the ignorant barbarian, though extremely affected at the sight, was yet so superstitious, and so unacquainted with the religion and laws of his country, as to suppose, he could not recal his vow. His daughter too was heroic enough to fulfil it, on her part ; requesting only two months respite, for the romantic purpose of going with her companions into lonely dales, there to lament that she must die a virgin. Then, after two months absence, this hapless maid, who, either from ambition or superstition, was a willing victim to her father’s inconsiderate vow, actually returned ; and Jephtha, it is said, *did with her as he had vowed* ; which cannot well mean any thing else, than that he put her to death,

* See Art. CCXLVII. and *Bryant on the Human Sacrifices of the Ancients*, which I have had translated into German.

and burnt her body as a burnt-offering. The greater number of expositors, indeed, would fain explain the passage differently, because they look upon Jephtha as a saint, who could not have done any thing so abominable. "Human sacrifices," say they, "are clearly contrary to the law of Moses."—Very true.—But how many things have ignorance and superstition done in the world, that expressly contradict the law of God? Have we not, among Christians, seen persecutions and massacres on account of religion, with various other atrocities, and abominable proceedings, that are just as directly repugnant to the gospel, as any human sacrifice could be to the laws of Moses?—"But would the high-priest have accepted such an offering, and brought it to the altar?"—I certainly believe not; but we find not a word spoken of the high-priest, but only of Jephtha. What if he had performed the sacrifice himself? This would certainly have been a transgression of the Levitical law; which enjoined that every offering should be made by the hand of the priest, and at the place where the tabernacle and altar stood. But that injunction had, on numberless occasions, been violated by the Israelites, and had, by the opposite usage, become almost abrogated. Jephtha, who, from superstitious ignorance, was, in the sacrifice of his daughter, after the Canaanitish fashion, about to perpetrate a most abominable act, forbidden not only by the law of his country, but also by the law of nature, might very well have been guilty of the lesser fault, now actually a very common one, of making his offering in the country beyond Jordan, of which he was himself master. Amidst all the doubts

that we start concerning this clearly related story, we do not consider *who* Jephtha was ; a fugitive from his country, who, in foreign lands had collected and headed a band of robbers ; nor yet *where* he now ruled,—beyond Jordan, in the land of Gilead. And a still more important circumstance mentioned in the chapter (xii.) immediately following our story, has been most inadvertently overlooked. Immediately after his victory over the Ammonites, Jephtha went to war with the tribe of Ephraim : but the tabernacle was at Shiloh, within the limits of that tribe ; and the high-priest, therefore, could certainly have had no concern with an offering that *Jephtha* meant to make on account of his success, nor would it have been brought to the altar at Shiloh, but made in the land, where Jephtha himself ruled. It is unaccountable, that not a single expositor should have attended to this war with the Ephraimites : but that the one half of them should be so simple as to deny, that Jephtha did offer up his daughter, because the high-priest would not have accepted the offering ; and the other, in other respects more correct in their opinion, so obliging, as to obviate that objection, by presuming that the high-priest must have been deposed for making such an offering.—This, however, is a controversy, into which I will not enter farther, because it does not deserve it. That carelessness is too gross, which forgets the end of the eleventh chapter, at the beginning of the twelfth.

Moses has yet another passage relative to *Cherem*, which presupposes that people sometimes consecrated their own fields ; a field thus consecrated by *Cherem* could not, like one vowed in the common way, be

redeemed again, Lev. xxvii. 28, 29. What is said in that passage concerning human beings, whom any one devoted to God by *Cherem*, and who were thereby necessarily put to death, seems to apply to the slaves made in war, and has, therefore, been already considered.

Of *Cherem* enough: I now return to those common vows that were made in a less sacred manner. Moses himself, in Numb. xxx. 2. divides these into two sorts, 1. Vows of dedication; *Neder*, נדר; 2. Vows of self-interdiction, or abstinence; *Issar*, אסר; or *Issar al Nefesch*, אסר על נפש.

I. Vows of dedication, that is, in the stricter sense of the word, when a person engaged to do any thing, as, for instance, to bring an offering to God; or otherwise, to dedicate any thing unto him. Things vowed in this way, were,

1. *Unclean beasts.* These might be estimated by the priest, and redeemed by the vower, by the addition of one-fifth to the value, Lev. xxvii. 11,—13.

2. *Clean beasts used for offerings.* Here there was no right of redemption; nor could the beasts be exchanged for others under the penalty of both being forfeited, and belonging to the Lord, Lev. xxvii. 9, 10.

3. *Lands and houses.* These had the privilege of valuation and redemption, Lev. xxvii. 14,—24.—To these we have to add,

4. *The person of the vower himself*, with the like privilege, Lev. xxvii. 1,—8.

The most common species of vow, then, was that, whereby a person promised an offering unto God, which was usually consumed at an offering-feast,

Lev. vii. 16,—21. To this species seem to belong also, what are called the *Second Tenths*, of which Moses often speaks, without ever mentioning them as at all a new institution, and which the people probably considered as obligatory upon them from a vow of their ancestor Jacob; who, on his flight from Esau, vowed, that, if God would bring him happily back to Palestine, he would, of all that Providence should bestow upon him, give the *tenth* to the Lord; Gen. xxviii. 22. The descendants of Jacob seem to have held this vow of their progenitor as for ever binding upon them; at least, Moses found among them a sort of tithe, which is plainly distinct from the tithe paid to the tribe of Levi. In Deut. xii. 17—19. xiv. 22,—29. xxvi. 12,—16; we find Moses making ordinances concerning it, which shall be noticed in the Article upon Tithes; I here only advert, in passing, to its origin, from an ancient vow; and observe, that Moses destines it to offering-feasts, or to those benevolent festivals held every third year, to which were invited priests, Levites, strangers, widows, orphans, and the poor, and in which even the slaves were allowed to partake.

Concerning the redemption of *vowed fields*, the necessary observations have been already made, under Art. LXXIII. When they were left unredeemed unto the year of jubilee, they fell irrecoverably, and beyond the power of redemption, to the priest for ever.

Vows, whereby the hire of whoredom or of sodomy was to be dedicated to God, were utterly unacceptable, Deut. xxiii. 19. The reason is not, because any

such vow would in itself have been sinful ; to take the hire of whoredom, or to practise it, is sinful ; but not to dedicate to the sanctuary, the hire of whoredom already taken, of which one wishes to be rid. The real reason of its non-acceptance was, partly a regard to the honour of the temple, which was never to be sacrificed to such filthy receipts ; and partly, the dread of an abuse, concerning which, something will appear in Art. CCLXVIII. on the subject of *aggravated whoredom*. The person who had taken the hire of whoredom, might keep it, restore it, or throw it away, as he chose ; but durst not make of it a gift unto God.

Whoever devoted himself to God, became a slave of the sanctuary. (See Art. CXXV.) Such a person, however, was not absolutely bound by his vow ; for he was released from it by means of a ransom, concerning which, and its legal appreciation, Art. CXXIV. is to be consulted. The rate of redemption was not, as is commonly believed, made by the priest himself, a party, and the receiver of the money ; but by the temporal magistrate. I own that, in this point, I, for a long time, was in the same mistake with others, and followed the established opinion, according to which, it is the priest who is addressed in Lev. xxvii. 2, 3. when it is said, “ by *thy* reckoning,” and “ *thou* shalt reckon.” In translating the Bible into German, I first perceived how improbable this address of a person not once mentioned was, and that Moses himself must be the person here addressed ; at least if we are to follow the common Hebrew text : for that on this passage there are various readings, which may alter the sense, I will not conceal, although I shall

not trouble my readers with quoting them. According to the printed Hebrew text, then, the estimation of the devoted person was committed not to the priest, who had himself to receive the amount of it, but to Moses, and his successors in office, that is, to the civil magistrates ; but still, in such a way, that they could never exceed the legal estimate, although, in consideration of circumstances, and when the vower was poor, it was in their power to remit a part of it. In Moses' own writings, we do not indeed find, that parents ever devoted their children to God ; but examples of this appear in the subsequent parts of the history, among which, that of Samuel is the most remarkable. His mother, who was very anxious to have children, vowed, (and this was certainly some hundred years after Moses' death) that if she received a son, she would present him as a gift to God ; and she fulfilled the vow, 1 Sam. i. 11. ii. 11. Had this devotement, however, proved a burden on the son, a redemption would probably have taken place ; only no such thing is expressly stated in the writings of Moses, because he never speaks of such parental devotements, which were probably not common in his time.—We now come to treat of

II. Vows of *self-interdiction*, or *self-denial*, where a person engaged to abstain from any thing, the use of wine, for instance ; or from food on some particular day ; in other words, to fast. Moses, in the xxxth chap. of Numbers, repeatedly distinguishes these from other vows, and calls them *Issar*, or *Issar al Nefesch* ; that is, *a bond upon the soul, or person ; a self-interdiction from some desire of nature, or the heart ; or, to*

express it more clearly, *a vow of abstinence*, particularly from eating or drinking.

Among these vows of abstinence, may be classed those of *Nazaritism*, described in Numbers, chap. vi.; although they have also something in common with the first species, and are, as it were, a mixture of both kinds. A Nazarite, during the continuance of his vow, durst drink no wine nor strong drink; nor eat of the fruit of the vine, either grapes or raisins; nor come near any dead body; nor otherwise wittingly defile himself. He was also obliged to let his hair grow. At the termination of the period of his vow, he had to make certain offerings prescribed by Moses, and what other offerings he had vowed besides; as also to cut off his hair, and burn it on the altar, and then first drink wine again at the offering-feast. These ordinances, however, rather belong to the ceremonial law, than to the Mosaical jurisprudence, of which I here treat. It is only necessary to attend to this farther circumstance, that vows of *Nazaritism* were not an original institution of Moses, but of more ancient, and probably of Egyptian, origin; and that, in his laws, he only gives certain injunctions concerning them, partly to establish the ceremonies and laws of such vows, and partly to prevent people from making them to, or letting their hair grow in honour of, any other than the true God. What typical views he may have had in the ceremonies he prescribed, it forms no part of my present subject, in which I merely consider the Mosaic laws on the principles of jurisprudence, but rather belongs to theology, to ascertain. But that be-

fore the Mosaic law was given, there had been Nazarites among the Israelites, is manifest from the following circumstance: The ordinance of Moses concerning the Nazarites, which stands in chap. vi. of Numbers, was given in the *second* year after the departure from Egypt; but in an earlier law concerning the sabbatical year, which was made in the *first* year, Moses adopts a figurative expression from Nazaritism, calling the vines, which in that year were not to be pruned, *Nazarites*, Lev. xxv. 5. The thing itself must, therefore, have been already in use, and that for a long period; because such figurative expressions, particularly in agriculture, gardening, and rural œconomy, do not succeed to the proper signification even of the most familiar and best known terms, till after a lapse of many years.

The vow of Nazaritism was not necessarily, nor usually, of perpetual endurance; and hence Moses ordained what offerings should be made at its termination or discontinuance. In later times, it is true, we have, in the case of Samson, an example of a person devoted by his parents to be a Nazarite for life; but even here, Nazaritism was not understood in its whole extent, as prescribed in the Mosaic law; for Samson plainly deviated from it, when he attacked and defeated the Philistines, from whose dead bodies a strict Nazarite must have fled, to avoid defilement. Of such perpetual Nazaritism, however, Moses does not at all treat in his laws; and, of course, does not say whether, like other vows, it could have been redeemed, had it proved a hardship to a son to abstain from wine all his life. According to the analogy of the other

laws of Moses on this subject, it should have been redeemable.

Vows of perpetual virginity we find neither in the Mosaic laws, nor in all the history of the Israelites, as far as it is contained in the Bible. Most probably it never occurred to any Israelite, that he could demonstrate his reverence to God, by directly frustrating the designs of nature and the Creator, and by doing all in his power to lessen the increase of the human race. This species of holiness, or religion, is so opposite to every natural idea of the human mind, that it is no wonder that ancient nations never stumbled upon it; and that so strange a sort of piety should have waited some thousand years for an inventor. In the Israelitish polity, there were, besides, many impediments to its existence. Too long continued virginity and barrenness were disgraceful; and the very circumstance of dying a maid, was considered in the same light; because the fair sex regarded themselves as the objects of love, and as destined for the propagation of the species. The greatest blessing which Moses, in the name of God, promised to the people, was a numerous progeny; and want of children was accounted his curse. The multiplication of the Israelites, and the promotion of marriages among them, was one of the great objects of the Mosaic laws; and even in the later ages, the more strict of the Jewish moralists considered it as sinful in a man to remain unmarried after his twenty-fourth year. No unmarried persons were required for the service of religion, and a priest could not be born but of a marriage *with a* priest, because the priesthood was hereditary. Daugh-

ters had no inheritance, on which they might have lived unmarried, and there were not then institutions for the support of those who would not marry, that is, for *Nuns*. In fact, a proposal for any such institution would, to the people of Israel, and even to Moses himself, have appeared in the same light as to us would the project of an establishment for giving bread to people that will not work. So little did the people of those days think of vows of perpetual virginity, that even Samson and Samuel, persons whom their parents devoted as Nazarites for life from their mother's womb, were married.—Judg. xiv. 1. xv. 2. 1 Sam. viii. 1. 1 Chron. vi. 13.

We may hence form a judgment of the regard due to the opinion of those who pretend that Jephtha's vow was fulfilled, by his daughter becoming a nun. To make this out, with the grossest ignorance and thoughtlessness, they give, from *modern* manners, an explanation of an *ancient* author, which is at once extremely forced, and in opposition to the context.—They think it incredible, that Jephtha should, after the fashion of the neighbouring nations, have sacrificed his daughter, notwithstanding that Moses expresses such strong apprehensions lest the Israelites should, in this point, imitate the Canaanites, and on that account, frequently warns them against human sacrifices, and appoints a punishment for the crime of a parent *lusting* to sacrifice his children; and notwithstanding also, that the historical, as well as prophetic books of Scripture, expressly charge the Israelites with this abominable imitation of heathenism. But, on the other hand, they assume it as a matter

quite easy to be conceived, that Jephtha should have devoted his daughter to perpetual virginity, although the Israelites knew of no holy virgins, or nuns. But allowing that *he* might have put such a construction upon his vow, as to preserve her life, and be content with dedicating her to God, still she would then have but become a slave of the sanctuary, in which situation, according to the customs of the Israelites, she would have had it in her power to marry, just as well as had Samson and Samuel. The probability, however, is, that she was actually sacrificed.

The words of the vow, as already stated, are, *Whatever first cometh forth from my house to meet me, shall belong to Jehovah, and I will offer it as a burnt-offering*, Judg. xi. 31.; and this vow, Jephtha, in ver. 39. is said to have fulfilled on his daughter. Now, in order to avoid the admission of a human sacrifice, contrary to the Mosaic law, probably because they consider Jephtha as a very holy man, and well instructed in religion, most of the commentators interpret the words in this manner, *It shall either belong to God, or be offered as a burnt-offering*; and say, that as it was his daughter who met him, the first of the two alternatives is fairly to be understood; because, *Talia sunt prædicata, qualia permittuntur a suis subjectis*. But allowing that this were admitted, it would only follow, that Jephtha must have dedicated his daughter to the sanctuary; and not by any means, that she was to remain a virgin for ever; for even those who, while in the womb, were devoted as Nazarites, and all persons presented to the sanctuary, were permitted to marry. We cannot, therefore, perceive any reason

for her father's complaining, and his saying to her, as she met him, *Oh, my daughter, how thou humblest me!* Admitting, however, that the vow did actually condemn her to be a *nun*, for which, by the way, we find no equivalent word in the Hebrew language, her intreaty in ver. 37. is altogether strange, *Let me go for two months, &c.* Had she heretofore not been a virgin, and was she now only to become so, after the two months elapsed? or was she to be immured in a nunnery? Such edifices the Israelites, at least, had not. The idea of bewailing her virginity for two months in sequestered vales, might perhaps be natural, but, from the mouth of a girl, yet to be supposed a stranger to love, it sounds somewhat indelicate, if her tears were to be shed, not on account of her dying a virgin in the bloom of youth, but of her not having got a husband. Let us figure to ourselves, a beautiful girl at present destined to a nunnery, and previously going along with her fair companions to solitary dales, to bemoan her virginity for two months, before taking the veil; would it not be a very strange scene? Would nobody be inclined to take pity on a company of damsels mourning for such a reason, and endeavour to bring them consolation?—At the end of the two months they return from their lamentations, and now Jephtha *does* according to his vow, ver. 39. Now if this consists in *her* not marrying, he does not so now first, for she was not previously married; nor yet does he send her into a nunnery. What then does he do? Send her perhaps to the tabernacle, to the high-priests? Any such intention as that of giving a daughter destined unto perpetual virginity, into the hands of *downright*

priests, whose duty it was to come by turns to the tabernacle, would certainly have been stranger than the previous lamentation of her fate. But, unfortunately, it was not then in Jephtha's power to have done so; for the tabernacle was erected within the tribe of Ephraim, and with that tribe Jephtha had gone to war immediately after his victory over the Ammonites. Some imagine that he built a little apartment in which he immured his daughter alone. This would have been his best plan no doubt, but in the words of the ancient historian it is difficult to find it.—In a word, this whole conceit, as it is extremely opposite to the customs of the Israelites, so neither can it, without a total disregard of consistency, be pinned upon the words of the author. For a Catholic, who holds vows of chastity to be pleasing in the sight of God, and has them always before his eyes in the church to which he belongs, to give such an exposition of this passage, might not be reprehensible. But, that members of the Lutheran and Reformed Churches, who disapprove of such vows, should ever have allowed themselves to patronize it, is past my comprehension. Josephus, in *his* day, had no other idea, than that the daughter of Jephtha was actually put to death, and only remarks, that it was an illegal act, and must have been a sacrifice displeasing to God. *Antiq. B. V. c. 7. § 10.*

ART. CXLVI.

Ordinances that lessened the inconveniences of rash Vows.

§ 3. THAT certain vows, of which the literal fulfilment would have proved injurious or burdensome to the vower, might be redeemed according to a certain rate, has been cursorily noticed in the preceding Article. When any man devoted himself and his person to God, this rate was seemingly settled by the civil magistrate; but in the case of houses, lands, or cattle, by the priest; and in both cases, according to particular rules; so that although less than the legal sums *might* be accepted, more could never be demanded.—See Lev. xxvii. 11,---15, 18.

In this way, therefore, there was always at hand a judge, authorized, in *some* cases at least, by the power of remission, to mitigate the severity of rash vows. There might, however, arise other more momentous cases of vows, requiring a judge invested with power from God himself to declare them not binding, or to commute them into money; as, for instance, when any thing sinful had been vowed, and the vower was not absolutely certain of its sinfulness; or when the vow, by a variety of unforeseen circumstances, became in course of time too great a burden, and perhaps hurtful to health. Now the analogy of the abovementioned law seems to imply, that in such cases, recourse was to be had to the priest, and that *his* remission might be regarded as God's. In the book of Ecclesiastes, (v. 5, 6.)

mention is made of a messenger of God, before whom the rash vower says, *It was an error*: and this messenger could hardly be any other than the priest. In fact, an authority ordained of God, with power of remission, seems absolutely necessary for the prevention of much misery and torture from conscience, provided the Deity accepts of vows; and on this very account, I cannot persuade myself, that vows are either by natural religion, or Christianity, binding, or acceptable to God; because neither the one nor the other directs us to any person invested by God with such a power, to whom we may turn for relief, in the case of having made rash, foolish, or sinful vows.

A very remarkable ordinance respecting vows made by daughters and wives, is given by Moses in the xxxth chapter of Numbers. If a father happened to hear that his daughter, while yet living in his family, had made any vow, he might annul it, and it was then, as of course, remitted by God himself: only he durst not delay doing so; for if he did not instantly avail himself of his right, but kept silence as to such a vow, from one day to the next, it became binding.

A husband, in the case of vows made by his wife, had the very same right, and indeed with a twofold addition. For, in the *first* place, he might even annul a vow made by his wife before marriage, although confirmed by her father; and in the *second* place, although the husband did his wife the injustice of allowing her vow to become valid by his too long silence, yet even in that case she was freed from its obligation. *He*, the husband, says Moses, ver. 16. *shall bear the blame*. She was, therefore, blameless in the sight of

God, if she obeyed her husband, and did not keep her vow.

With respect to the vows of sons in a state of minority, and under the care of their parents, I find nothing expressly ordained by Moses.

Nor yet do I find any ordinance against *interested persuasions to the making of vows*. In other words, I find nothing with respect to what in Catholic countries is wont to be accounted the most essential part of the law of vows. This chasm in the law of Moses, no one will wonder at, who recollects, that from him we have not a system of laws, such as are the *Institutions of Justinian*, but only single edicts occasionally promulgated. Most probably, in his time, nothing had taken place to render an edict against such persuasions necessary. The republic to which he gave laws, was yet in its very infancy, nor had any individual Israelite, as yet, property in land. Abuses only creep in by degrees; and, of course, the laws concerning vows, among a people that are become rich, and have had priests for centuries, will embrace a wider range, and be more various, than in the first forty years of their existence. Add to this, that the Israelitish priests were neither curates nor confessors, and did not so much as live in the same cities with the other Israelites; so that they had not such opportunities of prompting them, from interested motives, to make vows. In these circumstances, ages may have elapsed before one example of any such abuse occurred; and, in fact, I cannot recollect one in the whole compass of the Israelitish history.

CHAPTER XII.

PART II.—OF DEBTS, PLEDGES, AND USURY.

ART. CXLVII.

General Remarks on the great difference between our Laws, and those of the Israelites, respecting matters of Debt.

§ 1. IN nothing, perhaps, do the Israelitish laws deviate so far from our own, and, I may add, from all our ideas of equity and possibility, as in regard to matters of debt. They here confessedly bear the stamp of high antiquity, and shew that they were written for a nation, the principles of whose government were perfectly different from ours, and before chicane had invented evasions, or made immunities necessary. We find in them a mixture of mildness unknown to our laws, and of severity, to which, in Germany at least, we are strangers. The circumstances of the people to whom they were given, were, no doubt, in every thing that has even the most distant relation to matters of debt, quite different from ours: of course, the laws necessarily were so likewise.—I proceed to specify some instances in illustration of this.

The Israelites were a poor people just delivered from slavery. We (not excepting, perhaps, many

among us who receive alms) are rich, compared to the generality of them, taken on an average.— Among them, therefore, lending was at first, in some measure, alms; and they borrowed, for the most part, not as we do, for the sake of making profit with the capital, but from real indigence. In this situation, they must have continued for some generations after the time of Moses; for it is generally a long time before a poor nation becomes rich.

And yet Moses made *this* provision, that as soon as they had conquered Palestine, there should not be one individual without property. Every one had his hereditary land, which he might alienate until the fiftieth year, but not for ever. Poverty, therefore, never prevented the safety of what was advanced in loan; and of an insolvent debtor, destitute of property, on which execution could be made, they had hardly an idea.

But allowing that a debtor had no longer either land or moveables, still, as slavery was introduced among the Israelites, he might be sold, and his debt paid by the price of his own person,—a very speedy mode of evicting payment, no doubt, but among us altogether out of the question.

Chicane was yet unknown; for the people, from being but one family, had scarcely grown into a nation*; and having been under the hardest slavery, during

T 4

* If the common chronology be correct, according to which the Israelites sojourned in Egypt 215 years, they must have doubled their numbers every 15 or 16 years. In this way, they could not, in the year of Moses' birth (80 years before the Exodus), have been

which they had had little time to think about law-suits, they always pled their own causes before the courts of justice; and of advocates they knew nothing,

In ancient states, the administration of justice was in general expeditious, and particularly so in Asia, where its very summary procedure has been preserved unto this day. Tedious law-suits, therefore, on matters of debt, were never dreamt of, as among us. The whole dispute was probably decided in a single day; and if the debtor was unable to disprove his obligation, nothing but actual payment, as is still figuratively the case in some obligations, could release him from it. If he did not pay, objects of execution were always at hand. The produce of his land, until the year of jubilee, and all his property besides, even to his very person, and that inclusive, might be sold or seized by the creditor.

The condition of all who were Israelites by birth, was perfectly equal. There were no noblesse, enjoying the benefit of a milder law, particular exemptions, and a competent subsistence from their estates, though altogether immersed in debt. Whoever could not pay, was exposed to public sale. I do not, by this observation, condemn all the rights and privileges of our nobility. A great part of their estates are, in fact, not the property of the possessor, as such, but of the feudal lord, on whom they have been bestowed for specific purposes; and they cannot, therefore, in

stronger than 18,800 men; 16 years earlier, they would only amount to 9900; 32 years earlier, to 4950; and 48 years earlier, at most to 2475.

justice, devolve to the creditor, as the debtor's independent property, not even so much as the rent of them. I only say, that among the Hebrews, there were no such nobility, privileged in their persons and estates, to form any exception from the general rule ; and that, consequently, their laws as to debt, could not but have a very different aspect from ours.

As to commerce, Moses did not chuse to give it any encouragement, but wished that all his people should subsist by agriculture ; or if he permitted any of them to live by pasturage, it was rather a matter of tolerance than of approbation, as it but half accorded with his views. In his laws relating to debt, therefore, a regard to the interests of commerce was not to be looked for.

All these circumstances taken together could not but produce a set of laws respecting matters of debt, very different from, and, no doubt, much more compendious than what we know in Germany.

With regard to the article of payment, the Hebrew law was more severe than ours ; yet still only in such a degree, as to hold the due medium between that excessive lenity of *our* system, which goes to the total abolition of all credit, and the fearful severity of *that* established in the neighbouring country of England ; which though celebrated for the general mildness of its laws, exhibits, in this point, an example of the greatest rigour. In Germany, the debtor has so many privileges, that the creditor is always badly off, except in the case of bills of exchange, where the foundations of the law are altogether peculiar ; and in some German provinces, where the *jus taxationis* is

established, nobody can, on a judicial mortgage of 10,000 or 100,000 rix-dollars, lend 100 dollars, unless he chuses to depend on the caprice of the debtor, or the courts, and to trust for payment, to the appearance of honesty in the borrower. An exception to the law, so tremendous as that of a *letter of respite*, I will not so much as notice. The dread of it must ever render all manner of loans insecure, until sovereigns shall learn that it is true clemency to renounce the exercise of such a right ; and, instead of exercising it, rather to pay for debtors, or to cancel all debts at once.

In England, on the other hand, the severity of the law is here too great. If, on proof of the debt, it is not instantly paid in court, or acceptable security for it presented, the poor debtor must from court go to a frightful and expensive prison, out of which he never comes, until he pay not only the last farthing of the debt, but also the dues and demands of the jailor, whose trade it is to make profit of him, and to lead him into new debts. Of these prisons, even an English justice of the peace, viz. *Fielding*, in his *History of a Foundling*, has exhibited a most true and animated representation, as far at least as it goes ; but he has only drawn one side of the picture, in describing the situation of the richer and better sort of prisoners. That of the poorer has a far more dismal and afflicting aspect ; and often produces the jail or hospital fever, a disease closely akin to the plague, and by which the judges have sometimes been infected on the bench. Here, it is said, often lie pining in wretchedness and idleness, no fewer than 20,000 debtors ; a

number sufficient to form an army, were they not, from the effects of confinement on their health and their limbs, disabled from marching against the enemy. To this degree of rigour, which it has actually been often in contemplation to mitigate, the Israelitish law in the time of Moses, did not extend. It is true it allowed the insolvent debtor to be sold as a slave ; but betwixt slavery, which is in some measure a means of payment, and perpetual imprisonment, by which the creditor can never be paid, if the debtor has nothing, there is a very great difference. The slave enjoys the air, keeps his health and the free use of his limbs, which by tedious confinement become as good as lame : he gets work to do, and has not to endure the afflicting languor of solitude and idleness. His master will take care of him, were it only from interested motives ; at any rate, he has no occasion to plunge himself deeper in debt, in order to gratify the avarice of a hard-hearted jailor. He may be kept clean without much expense ; nor would his master be willing that he should be eaten up with vermin. If he be dutiful and industrious, he will probably gain the affections of his master, which will render his condition as a slave tolerably comfortable.

In other particulars, as, for instance, with regard to usury, and the extinction of all debts at the year of jubilee, the Mosaic laws are milder than any in use among us.

ART. CXLVIII.

*Judicial Procedure in cases of Debt—Legal Execution,
and its Objects.*

§ 2. So much on this subject in general.—I must now mention more particularly the Mosaic ordinances with regard to debts. Here, however, there are very great chasms in the written law; for as to almost every thing which a lawyer would expect to meet with at the very outset, Moses is perfectly silent, that is, he acquiesces in the laws of usage which he found already in force. We have from him, as has been already more than once observed, (Art. XVI. and CXLVII.) no *system* of laws, in the form of *Institutions*, but merely single edicts recorded in historical order. Where the consuetudinary law, already in force, was unquestionable, and required no confirmation, and where he found it unnecessary to make any change in it, he gave no edict; and in such cases, therefore, the chasm really is not in *his* law, as it then was, but only in *our* knowledge of it.

The judicial procedure seems to have been quite summary, and to have been regulated by the principles of natural justice, without chicaneries or evasions; just as might have been expected among a people as yet strangers to cunning, before the invention of legal quirks; and where every thing was managed by oral proceedings, without advocates. Moses, at least, nowhere finds it necessary to mention, how a debt was to be proved before the judge. Here,

therefore, our knowledge of the Mosaic law is nothing but chasms, which I do not at all attempt to fill up ; because that must be done from the principles of natural justice, of which every reader can judge and decide without my assistance.

That this rapid Asiatic justice, which, perhaps, decided in the most weighty cases, in a single quarter of an hour, must have been liable to very great abuses where the judges were dishonest, I readily believe. The book of Job, which, in my opinion, was written before the Mosaic law, probably by Moses himself between his 40th and 80th year, and which describes the manners of the kindred Arabian nations, gives repeated representations of scenes of the most severe oppression exercised on debtors by unjust creditors, which could scarcely have been possible had the administration of justice been formally tedious. See chap. xxii. 5,—9. xxiv. 6,—12. To these examples, I shall often have occasion to refer.—At the same time, this expeditious procedure had its advantages ; and its evils, which, like all progressive corruptions, went on for a long time before they became enormous, appeared but very trifling in the time of Moses, because the people were yet honourable and brotherly ; and the more especially, as Moses, after the advice of sage experience, appointed proper judges, and allowed cases that were truly dubious, to come, by speedy appeal, from the judge over 10, to that over 50, and then to those over 100, and over 1000, in succession : which could not but impress every one of them with the dread of any unjust decision reaching the ears of Moses himself in the last instance. At any rate, we

do not find, among all the Mosaic edicts, any one directly levelled at those abuses of summary justice, which are described in such animated language in the book of Job.

Besides the pledge which he might have lodged with his creditors, and concerning which I shall afterwards particularly treat, every Israelite had various pieces of property, on which execution for debt might readily be made. Moses nowhere determines in what order these were to be seized and applied for payment; leaving this point also to be regulated by the established law of usage. But the following were the *Objecta Executionis*, which might be expected to be found with every Israelite, how poor soever.

1. *His hereditary land*; that is, as soon as the people were come into Palestine; because, as already remarked in Art. XLI. and LXXIII., no Israelite could be born without such land, or, at least, without a right to the inheritance of his forefathers, which returned to him after the year of jubilee. The creditor, therefore, had always to do with a debtor possessed of a domicil and landed property. This hereditary estate could not, indeed, be transferred to the creditor in perpetuity, because all the lands were inalienable; but he might naturally attach its produce until the year of jubilee. In the Pentateuch, this latter particular, it is true, is not expressly stated; but we need not wonder at this, considering that Moses gave his laws to the people, while yet destitute of hereditary lands, and wandering in the wilderness. What, however, would have been the legal procedure, and under what limitations the creditor might seize on the pro-

duce of the forty-two harvests, between two years of jubilee, we may see from the laws, which determined the procedure in the case of a person selling his land, that is, more properly speaking, the *crops* of his land, on account of poverty. These are to be found in Lev. xxv. 14,—16, 25,—28.; and have been treated of under Art. LXXIII. To sell land, by reason of poverty, is, besides, in general, nothing else than to sell it for the purpose of extinguishing debt.

2. *Houses.* These, with the sole exception of the houses of Levites, might be sold in perpetuity, Lev. xxv. 29, 30.

3. *Clothes.* With regard to these, Moses nowhere expressly declares himself; but from the analogy of his law of pledge, it is probable that the necessary pieces of clothing were not permitted to be seized, and stripped from off the person of the debtor, as might be done by merciless creditors among the neighbouring nations*; for he even commands the creditor, (Exod. xxii. 26, 27.) who had taken in pledge his poor neighbour's upper garment (which was a large square piece of cloth, that was wrapped about the body by day, and served as a coverlet by night) to restore it again before sunset. Now, if the creditor had not so much as a right to the clothes lodged with him in pledge, still less is it likely that the law would adjudge to him unpledged clothes. In

* In the book of Job, xxii. 6. the unjust man is represented as extorting pledges, without having lent, and as stripping the naked of their clothing; and in such cases, the distrained debtor was obliged to pass the night without a covering, in the cold, chap. xxxiv. 7.

fact, it is too barbarous to strip any man of his raiment, and leave him to go naked: the sale of his person into slavery is by no means so cruel; for the slave does not lose his health by cold and wet, because his master must find him in food and clothing.

It appears, however, that the above-quoted law of Moses concerning the upper garment, had, by a very strange misconstruction, in process of time, given a handle to the exercise of a claim in the highest degree absurd. It is merely of pledge that Moses speaks; and the natural meaning of the law is, that no one would leave his *under* garment in pledge, and go naked from the presence of his creditor with what he had borrowed; while, on the other hand, there might be frequent cases where a man, to the great detriment of his health, having pledged his *upper* garment, must lie all night without a covering. He, therefore, enacted the law in favour of the latter, and did not think it necessary to say a word about the former. But when the Jews came to regulate their procedure solely by the letter of his law, as *that* made no mention of the under garment, so in the time of Christ, we find cruel creditors claiming the under garment of their debtors; but at the same time, quite conscientiously leaving with them the upper one, which Moses had expressly privileged. This I infer from a passage in the sermon on the mount, which though in itself obscure, receives great light from a comparison with Exod. xxii. 25, 26., and from the conjecture above stated, upon it. *Whoever will go to law with thee, and take thy (χιτώνα) under garment, let him have thy*

(ἱματίον *) upon *one also*, Matth. v, 40. If a man went to law with another, and was determined to accept of nothing else in payment but the very shirt off his back, he must have conceived that he could urge a legal right to it, or at least the semblance of one; or that else his complaint, instead of being admitted by any court, would, without their once citing his adversary, be dismissed as futile. We must suppose a court to be incredibly corrupt or imprudent, if we can doubt this. Now, that a person, to whom I am nothing indebted, should urge a claim to my under garment, is what I can scarcely comprehend. The case, therefore, which Christ puts, is most probably this: “ I have borrowed
 “ from some one, and as I cannot pay, my hard-hearted
 “ creditor, with the help of the law, means to strip
 “ me of my clothes. To my upper garment he can
 “ put in no claim, because it is privileged by Moses;
 “ and, therefore, he directs his attack against my
 “ under garment, which I wear over my naked body.
 “ Here, on the one hand, the *summum jus*, as it is cal-

VOL. II.

U

* That χιτών is properly the under garment, worn next the skin, has been shewn by expositors, on this passage, particularly by *Raphel*; whereas ἱματίον is the upper garment, which a person could put off without being naked; see Matth. x. 50., where the blind man threw it off, not to impede his walking; and Acts xii. 8., where Peter puts it on, after having girt himself, that is certainly, having on his under garment. On this passage of Matthew, Theophylact says, “ The χιτών is properly what we otherwise call ὑποκαμισσον; but “ the ἱματίον, that garment which may be cast off.” He indeed adds, that these terms are sometimes used indiscriminately; but as they are here used in contradistinction, it is manifest that they are to be understood each in its proper meaning.

“ led, is, no doubt, in favour of my creditor ; but, on
 “ the other, perhaps the highest equity, and even
 “ humanity itself, pleads for me.” In this case, the
 admonition of Jesus is to this effect : “ So far should
 “ it be from your desire to act unjustly, or manifest
 “ exasperation, and vow revenge, against a cruel cre-
 “ ditor, that, if your under garment does not suffice to
 “ pay him, you ought to give him even the upper one,
 “ although he could not get it by any judicial decree.”

4. *The person of the debtor ;* who might be sold, along with his wife and children, if he had any.—This, as an object of execution, Moses does not expressly point out, any more than he does any of the foregoing ones ; but it is plainly to be understood as such, from the whole analogy of his law ; and we find it was actually in use. What he says in Lev. xxv. 39. of people sold, *by reason of poverty, for servants*, must refer to what was usually done for the payment of their debts ; for he is not there speaking of those who were sold for the payment of any thing stolen : but his words expressly are, *If thy brother beside thee become poor, and be sold to thee as a servant.*

Among the neighbouring nations, the same law was in common use. In the book of Job, xxiv. 9. we thus read : *He (certainly not the man of compassion) tears the suckling from the breast, and takes the child of the needy for a pledge.* This severity towards sucklings, which must very often have been unjust, could not possibly have taken place, but where it was usual to seize an insolvent debtor, with his wife and children, as slaves.—In 2 Kings iv. 1. we see a creditor demanding the two sons of a debtor, who had died

without paying him, as servants ; nor was there any means of saving them from bondage, but actual payment of the debt.—In Isaiah, l. i. it is regarded as quite a common thing for a debtor to have sold his children to the usurer ; which certainly he would never have done voluntarily, or unless he could have been legally compelled.----Thus far go the examples which I have found previous to the Babylonish captivity, and which properly belong to the Mosaic law.

When the Israelites returned from that captivity, we find (Nehem. v.) some rich persons exercising the same right over their poor brethren that were their debtors : appropriating to themselves, for payment, not only their land, but also their sons and daughters, and at last seizing on themselves as bond-slaves. This was, as I believe, conformable to the Mosaic law ; but they had, which was contrary to that law, taken interest from their brethren, and generally shewn themselves usurers ; so that there was much cause of complaint against their thus inflaming their accounts of debts by illegal usury. In this extraordinary emergency, Nehemiah espoused the cause of the poor, and compelled the rich, against whom he called the people together, to remit the whole debts ; in vindication of which measure, he nowhere appeals to the authority of Moses, but to the demands of equity. He, moreover, exacted an oath *from* the rich, that they would never afterwards press them for payment of those debts. This procedure of Nehemiah has, properly, nothing to do with the Mosaic law, but much resembles the measure of *Novæ Tabulæ*, sometimes spoken of at Rome, when the burden of debts became ex-

cessive. It was a measure altogether extraordinary, which the previous illegal exaction of usury, and the poverty of a people but just returned from captivity, rendered lawful or necessary. Its being put on record, however, may doubtless have contributed to the declarations made in later times by the Jewish lawyers against the sale of debtors for bondmen.

The last example which we find of this law, occurs in Christ's parable in Matth. xviii. 25. ; where a debtor, though a man of respectable station, his wife, his children, and all that he had, are said to have been ordered for sale ; but it is not certain whether Jewish customs are pourtrayed in this parable ; because Christ represents a king as taking an account of his servants ; but the Jews had not had a king for thirty years before this period.

Afterwards, and since the Jews have lived among nations whose laws are different, the sale of debtors for bondmen, has gone so much into desuetude, that even their most eminent Rabbins condemn it, and say, that *none but a thief can be sold as a slave*. This may be true of their time ; but it is not true with respect to the ancient Mosaic law, or of the period prior to the Babylonish captivity*.

It would appear that the creditor who took his debtor as a bond-slave, was in the Hebrew law called,

* The confutation of the doctrine of these Rabbins, is the subject of a Dissertation published at Helmstadt, in 1741 ; *De Debitore obæ-rato secundum Jus Hebraicum et Atticum Creditori in Servitutem adjudicando, quam præside Julio Carolo Schlaegeo examini submittit, Auctor, Car. Ludov. Wilpert*. It proceeds partly on different grounds from those which I have taken.

in the proper sense of the term, *Noges*, (נוגשׁ); but this I cannot maintain with certainty†.

The articles already mentioned, might, as objects of execution, be looked for in possession of every Israelite, however poor, unless he had previously sold or forfeited them to a creditor. The three following attachable articles may be added, as in possession of the generality of people, viz.

5. *Cattle.* With regard to these, Moses indeed ordains nothing; only we see from the book of Job, that creditors were wont to lay hold of the cattle of debtors, in a harsh and unjust manner, Job xxiv. 3. If, however, the debt was just, and the creditor did not injure the debtor by pressing for payment, nothing could well be objected against the attachment of his cattle, considering that the law authorized the sale of himself and his family.

6. *Household furniture.* With regard to this article, we have a single cursory hint in Prov. xxii. 27., viz. that the surety who could not pay, ran the risk of having the bed on which he lay seized by the creditor. (It is merely the *bed-stead* which is here meant, and not the privileged upper garment, which served as a blanket, or coverlet, to the bed, by night.)

7. *Ornaments.* The Israelites, and still more, the Ishmaelites and Midianites, their nearest relations, as descendants of Abraham, wore many sorts of golden

† The word נוגשׁ is frequently used in relation to the rigorous exaction of debts by means of execution, and sometimes it is applied to tyrannical domination. A more minute investigation would be too philological, and to a reader in quest of the Mosaic law, disagreeable.

ornaments, particularly ear-rings; which they even used to hang in the ears of their children, and superstition often consecrated them to the gods. In the Chaldaic language, they had a name equivalent to *holy things*, and were regarded as *amulets* against witchcraft and diseases. It may also be, that, even without such superstitious notions, and the more to shun all manner of idolatry, they were dedicated to the true God.

These golden ear-rings, nose-jewels, and beads, were, in fact, one of the readiest means of payment; but fashion may have rendered them so necessary, as to make it very painful to parents to have them taken from their children, especially if they fancied that, as consecrated ornaments, they protected them against all manner of evils. If they were dedicated to the true God, the creditor, it was presumed, would not seize them from the innocent children, or incur the guilt of a sort of sacrilege, for such trifles. No doubt, if a debt was just, such subterfuges and outcries would not avail parents; but in cases of unjust claims, inflamed by exorbitant and forbidden usury, the hardship of having the consecrated jewels torn from their infants, would be still more severely felt. It is probably this which is alluded to by the prophet Micah, ii. 9.

As to ready money, which a debtor might have had by him, it is scarcely to be mentioned as an object of execution; for where justice is summary, and the debtor may be sold as a slave, no man possessed of ready money, will ever allow matters to proceed to such extremities.

I must again acknowledge the great chasms in our

knowledge of this subject, and that we are ignorant in what order, and with what limitations, the different attachable articles might be seized. We should, however, in general, know much less of them than I have stated, if we had not taken advantage of what Moses has ordained on the subject of pledges ; and also, of the charges against usurers, who, however unjust their demands, always had recourse to the usual legal expedients to enforce them, and to extort what they had no title to from their debtors.

ART. CXLIX.

Imprisonment not used as a compulsive measure to enforce Payment ; and still less, Torture.

§ 3. OF other compulsory measures against debtors, such as imprisonment*, Moses and his laws knew nothing : and in fact, where the debtor could be sold or adjudged to his creditor, they were unnecessary.—Bond-service actually clears off a part of the debt, and is not such a cruel expedient as imprisonment ; which is only a new evil to the poor debtor, involving him in additional expense for charges of maintenance. I cannot better state its inefficacy, than in the words of the well-known adage, *Carcer non solvit*. We shall afterwards see, when we come to treat of Criminal

U 4

* I speak not here of imprisonment, as inflicted on a debtor intending to run away, but as resorted to for a punishment by the creditor, and as a means of obtaining satisfaction, after his claim is proved, although his debtor has no thought of making his escape.

Law, that Moses did not so much as denounce the punishment of the prison against *crimes*, although it was common in Egypt ; so much the less will it be expected, that in ordinary cases of debt, with the exception of that of fraudulent bankruptcy, he should have resorted to such a preposterous punishment.

In later times, no doubt, imprisonment may have been in use, as a means of compelling payment of debt ; and we see, that Christ, 1500 years after Moses, speaks of it in two of his parables, as a well-known practice. Notwithstanding this, however, it is no part of the Mosaic law, but of that foreign law which the Jews had adopted during their long-continued subjection to other nations. The one of these parables is recorded in Matth. xviii. 30. ; where a debtor, of some condition, who could not pay down on the spot a hundred pence, is cast into prison. But it is not certain whether this parable is contrived on the principle of Jewish or foreign customs. In the other passage, Matth. v. 26. *Thou shalt not come out from prison till thou payest the last farthing*, it is probable that our Saviour had not the subject of debt in his view ; for the connexion of the passage seems rather to relate to an accusation made against a person, for some outrage or injury. According to the Syriac idiom, *to pay the last farthing*, might be equivalent to *completing the legal punishment* ; and in Galilee, when the Sermon on the Mount was delivered, the Syriac language was spoken.

A very frightful, and, indeed, quite horrible idea, of the Hebrew law respecting debts, is entertained by many people from their infancy, from an expression in

Matth. xviii. 34. where it is said, that the king delivered the servant, who owed him an immense sum, unto the *tormentors*, until he should pay it all. Now, a more inhuman expedient for enforcing payment from an insolvent debtor than torture, it is scarcely possible to conceive.

But, allowing that *debtor* and *torture*, in the strict sense, were here spoken of, still that cruel expedient does not belong to the Mosaic law, which does not recognize torture, no not even in cases of capital crimes, as a means of either extorting confession, or discovering accomplices. Indeed, throughout the whole books of the Old Testament, at least those which we have in Hebrew, and which were written before the time of Alexander the Great (for I must thus explain myself, else I shall be unintelligible to a Catholic civilian) we find no example of torture, no ordinances concerning it, nor so much as a single word on the subject.

Besides, we have not the least ground for drawing, from this parable, any conclusion respecting Jewish customs : for probably it was framed not upon them, but on those of the more eastern parts of Asia. It represents a king as calling his servants to account, but it was now 30 years since the Jews had had a king.

But throughout the whole parable, it is not a common debtor who is spoken of, but a *traitor*, who had laid his hands on the royal treasure, and who would now be hanged, in such a case, for much less than 10,000 talents. With this criminal, the king, at first, dealt mercifully ; only commanding him to be sold like any common insolvent debtor ; but when, by his unreasonable severity towards one of his colleagues, who

owed him the merest trifle, he had shown himself unworthy of the least compassion or lenity, the king allowed him to be criminally tried for his defalcation, and punished as a robber of the public treasure.

After all, it is uncertain, whether the *tormentors*, to whom he is said to have been delivered, would put him to the torture. For we shall afterwards see (Art. CCXXXII.) under the head of Criminal Law, that corporal and capital punishments were usually executed by the king's life guard; that the soldiers belonging thereto were called *Tabbachim*, (טבחים) *Torturers*; that to their care even state prisoners were committed; and, that as early as Joseph's time, the prison for the king's servants was in the house of the commander of the life guards. Most probably, therefore, this traitor was only condemned to perpetual imprisonment. But, to whatever punishment he was condemned, it was not by the Jewish, and still less by the Mosaic laws, that he was tried, but by those of the more eastern countries of Asia.

ART. CL.

Of Pledge.

§ 4. AMONG the Israelites in the time of Moses, it must have been very common to lend on pledge—and *that*, according to the meaning of the word, in natural law, which allows the creditor, in the case of non-payment, to appropriate the pledge to his own behoof, without any authoritative interposition of a magistrate, and to keep it just as rightfully as if it had been

bought with the sum which has been lent for it, and which remains unpaid.

But while pledges are under no judicial regulation, much extortion and villainy may be practised, when the poor man, who wishes to borrow, is in straits, and must of course submit to all the terms imposed by the opulent lender. This we know from daily experience: the persons who lend money extrajudicially on pledge, being generally odious or contemptible usurers. Among a poor people, such as we must suppose every people to be in their infancy, the evils of pledging are still more oppressive. The poor man often finds himself under a far greater necessity of borrowing, than we can easily imagine, because there is nothing to be earned; and the husbandman, who has had a bad harvest, or his crop destroyed by hail, or locusts, must often borrow, not money, but bread, or else starve. In such cases, he will give in pledge, whatever the rich lender requires, however greatly it may be to his loss. Nor has he, like borrowers in our days, many articles which he can dispense with, and pledge; such as superfluous apparel, numerous shirts, and changes of linen, household furniture, and various little luxuries, that are become fashionable among our poorest people; but he must instantly surrender things of indispensable use and comfort, such as the clothes necessary to keep him warm, his implements of husbandry, his cattle, and (who could suppose it?) his very children.

Here the avaricious lender on pledge cannot but be most heartily detested, and incur the universal execration of the people. And hence, in the book of Job, which gives us some views of Arabian manners, such

as they were a little before the departure of the Israelites from Egypt, when the picture of a villain is drawn, the author does not forget, as one trait of his character, to represent him as a *lender upon pledge*. Thus in chap. xxii. 6. xxiv. 7. *He extorts pledges without having lent*, (an act of extreme injustice, which, however, may take place when the pledge is given, before the loan is paid down,) and *makes his debtors go naked*; probably because he has taken their most necessary clothes in pledge, and as unfeelingly as illegally detained them.—In chap. xxiv. 3. *He takes the widow's ox for a pledge*; so that she cannot plow her land, to gain the needful for clearing off the debt; and the ox, thus pledged perhaps for a trifle, if it cannot be redeemed on the day of payment, becomes the certain property of the greedy creditor. But the poor widow thus loses ten times as much as he unjustly gains, unless he yet think fit to repair the injury done to her land; for she can now no more cultivate it, and must be every day plunging deeper in debt and misery.—At ver. 9. *He takes even the infant of the needy for a pledge*, and, of course, if not duly redeemed, keeps it, for bond-service, however disproportioned to its value the loan may have been.

Moses by no means attempts to abolish the practice of extrajudicial pledging, or to make such regulations, as we have in our laws, whereby the pledge, under what agreement soever given, may be sold to the highest bidder, while of the price the creditor can only receive the real amount of his debt. These are inventions to be found only in the more elaborate laws of nations farther advanced in opulence and refinement; and

which, in the present situation of the Israelites, would have been impracticable and unavailing. Indeed, among a people so poor, they must have proved detrimental, had it been possible to put them in practice : for no one would have been inclined to lend a trifle (and to a poor borrower even trifles are important), on pledge, under so many formalities, and when the way to arrive at payment, instead of being short and simple, was through the interference of a magistrate. In this way a needy person must always have found it difficult, if not impossible, to obtain a loan, particularly a small one : which, among a poor people, is just as great an evil, as can arise from fraudulent practices in pledging. It will not, therefore, be imputed to Moses as a fault, that his statutes contain not those legal refinements, which probably were not then invented, and which even yet may be said rather to be in record in *our* statute books, than to be in our practice. They would have been dangerous to his people, and peculiarly oppressive to the poor. He let *pledge* remain in its proper sense, *pledge* ; and thus facilitated the obtaining of loans : satisfying himself with making laws against some of the chief abuses of pledging.

Of these laws, one prohibited the creditor from going into the house of the debtor to fetch the pledge. He was obliged to stand without the door, and wait until it was brought him, Deut. xxiv. 10, 11. A person in want, and much straitened for a loan, stands in so dependent a relation towards his rich neighbour, and is so humbled, that he will make many compliances contrary to agreement and to justice. Now, if the creditor himself may go into his house, he will

probably be disposed to lay hold of the very best article he sees, pretending that the pledge agreed on is not sufficient ; or, at any rate, he may choose some other pledge that strikes him as more valuable : nor will the other party venture to remonstrate against it. Such cases may, perhaps, have then happened, and given occasion to this law. Such cases, at least, I myself recollect to have seen at the university ; where pawn-brokers, that lent money to the students, came into their apartments to choose their pledges : and yet our students are seldom so submissive and humble as other debtors.

Other laws of Moses prohibited the taking, or keeping in pledge certain indispensable articles, such as,

1. *The upper garment of the poor, which served him also by night for a blanket*, Exod. xxii. 25, 26. Deut. xxiv. 12, 13. If taken as a pledge, it was to be restored to him before sunset ; for, says Moses, or rather God by Moses, *it is his only covering, in which he wraps his naked body. Under what, then, shall he sleep ? If he cries for it unto me, I will hearken unto him ; for I am merciful.* The better to understand this law, we must know, that the upper garment of the Israelites (*Simla* שמלה) was a large square piece of cloth, which they threw loosely over them, and which by the poor was also used for a blanket or coverlet to their beds. Dr. Shaw, in his Travels through Barbary, has given the best description of it, under its modern Arabic name *Hyke**. It might be laid aside in

* See Art. Natural History, ch. iii. § 7. p 224. of the edition of 1757. “ These Hykes are commonly six ells long, and five or six

the day time, and, in fact, in walking it was so troublesome, that labouring people preferred being clear of it, and were then, what the ancients so often call *naked*. When they had to walk, they tucked it together, and hung it over their shoulder. By night it was indispensable to the poor man, for a covering : at least, it was at the risque of his health, and even his life*, by exposure to the cold, if he wanted it : for in southern climates the nights, particularly in the summer, are extremely cold.

“ feet broad, and serve the *Kabyls*, as well as the Arabs, for a complete dress,” [this means, when they choose to go *in full dress*, and is put in contradistinction to their half-dress, that is, when they wear only their under garment] “ by day ; and as they sleep in their clothes, as the Israelites did (Deut. xxiv. 13) it becomes their covering by night.’ It is a wide and troublesome sort of garment ; “ frequently getting into disorder, and falling to the ground ; inso- “ much that the wearer is every moment obliged to raise and fling it “ around him.”

Niebuhr, in his description of Arabia, p 64. says, “ The reader will “ not, perhaps, suspect that this same trifling apparel of the common “ Arab, likewise constitutes the furniture of his bed. He spreads “ out his large girdle, and forms with it an under bed ; and then with “ the *Hyke* that he throws across his shoulders, he covers his whole “ body and his face, and sleeps naked betwixt the two in peace and “ contentment.”

* It was, properly speaking, one single night’s exposure to the cold, that caused the very sudden death of *Mr. Von Haven* ; See Niebuhr (i p. 369) who, in various passages, notices the dangerous consequences of thus catching cold : and the principal circumstance that he mentions concerning it is, that the oppressive heat of the apartments induces people to prefer sleeping on terraces, or otherwise in the open air ; which does not hurt those who take care to cover their face and head sufficiently ; but is extremely dangerous where that is neglected.

In my German translation of the bible, I have expressly rendered the word *Simla* by *Bett-Tuch*, (that is, *bed-cloth*) because I could find no German term at once equivalent to *Oberkleid* and *Bett-Tuch*.—From several passages it will appear that it must have meant a *cloth*, and in particular, one for a bed; for example, Gen. ix. 23. Exod. xii. 34. Deut. xxii. 17. But this remark does not so properly belong to this place, as to my *Hebrew Antiquities*, § 26. p. 44. hitherto printed solely for the use of my hearers, but which, since it is desired, I mean to give to a bookseller for publication at next fair; and therefore here venture to quote.

2. *Mills and mill-stones*, Deut. xxiv. 6. The Israelites had no public water or wind-mills. To the former, in most districts, the necessary supply of water would have been wanting, and the latter were hardly as yet invented*. Every one was, therefore, obliged to grind his corn in his own house, and, for that purpose, had either a hand-mill†, or one somewhat larger, driven by asses. Now, such a hand-mill, or the stone of the larger sort, would, no doubt have been a most likely pledge to enforce speedy payment of a debt: but then the debtor, even though not absolutely poor,

* In Egypt, whence Moses conducted the Israelites, Mr. Niebuhr saw neither wind nor water-mills; and the same was the case in those parts of Arabia which he visited. I will not, however, deny, that in *some* parts of these countries there now are water-mills. Abulfeda expressly mentions—but, indeed, as something remarkable in geography—that the brook Arnon drives some water-mills.—Of windmills I recollect no accounts.

† They are described in Niebuhr's Arabia, p. 217.

would thus, if unable to pay at the proper time, have been brought into a difficulty, utterly disproportioned to his loan; for however abundant his corn, he and his family must have wanted bread.

By the analogy of these laws, other sorts of pledges equally, if not more indispensable, such as the utensils necessary for agriculture, or the ox and ass used for the plough, must certainly, and with equal, and even greater reason, have been restored. But we need not wonder that Moses does not mention these examples, as he gave his laws in the wilderness, and before the Israelites had any land to cultivate; opposing only such abuses as had already become notorious. At the same time, the law in Deut. xxiv. 12, 13. is expressed in such general terms, that we cannot but see, that *the pledge, under which the debtor must sleep*, is merely given as an example, and conclude, of course, that, in general, from the needy no pledge was to be exacted, the want of which might expose him to an inconvenience or hardship; more especially when we find the lawgiver here declaring, that God would regard the restoration of such pledges, as almsgiving, or righteousness. And so it was in fact; and at the same time attended with no loss whatever to the creditor. For he had it in his power at last, by the aid of summary justice, to lay hold of the whole property of the debtor, and if he had none, of his person; and in the event of non-payment, to take him for a bond-slave. The law gave him sufficient security; but with this single difference, that he durst not make good payment at his own hand, but must prosecute. This term *prosecute*, has a terrific sound, when we

associate it with the idea of our tedious judicial procedure : but the rapidity of Asiatic justice gave no room for the indulgence of such terrors and objections.

ART. CLI.

Of Suretyship.

§ 5. CONCERNING suretyship, or warrantry, I recollect nothing in the Mosaic writings, except that the term expressing it, *Tesumat-jad*, (תְּשׁוּמַת יָד) that is, *giving or striking hands*, once occurs, where the circumstances of perjury are enumerated, Lev. v. 21. (of the Hebrew text, but vi. 2. English version.) It is mentioned more frequently in the Proverbs of Solomon, who gives very earnest admonitions respecting it. To the Mosaic law, therefore, the consideration of it does not properly belong ; but I do not, by so saying, mean to insinuate, that in the time of Moses there was no such thing in use, or that it would not have been accepted ; but only that the matter was then decided altogether by natural justice, and the law of custom ; that it was seldom resorted to ; and that there had arisen no difficult law-suits, to require any decision from Moses respecting it ; so that we do not know what was then the legal process in the case of suretyships.

In Solomon's time, on the contrary, when trade and commerce became brisk and extensive, suretyship must have been more frequent, and the source of great misery to many who allowed themselves to be inconsiderately involved in it. The surety was treated with

the very same severity as if he had been the actual debtor; and if he could not pay, his very bed might be taken from under him, Prov. xxii. 27. Solomon, who, as king, might himself make laws, considered such a person as not a good moral character, and not entitled to much sympathy or favour from a court. What were his reasons for this, it belongs not to my subject, but to ethics, to shew. The man who readily becomes surety for large sums, may, no doubt, appear generous, but certainly is not honest in the highest sense of the word; for unless he knows the whole circumstances of the person for whom he becomes bound, and is resolved to consider the whole sum which he insures precisely as an alms given to him, and is willing, as well as able, to pay it for him without all grudge, he is, in a moral sense, an impostor, with all his good heart, and a very pernicious member of the community. But with all this, I am not here concerned; nor yet with the formalities of suretyship, which probably consisted in giving of the hand; for what we know of the practice is posterior to the days of Moses.—See Prov. vi. 1,—4, &c. &c. Job xvii. 3.

It would appear that the hand was given, not to the creditor, but to the debtor, for whom the person was surety, in the creditor's presence. For Solomon warns his son against giving his hand to a stranger, that is, against being surety for a person unknown, and advises urging him to whom the hand was given, and in whose power the surety was, to pay his own debt: so that it must have been to the debtor that the hand was given.

ART. CLII.

Of the Equity of taking Interest, and the Reasons thereof; which we must know, in order to our forming a right judgment of its prohibition by Moses.*

§ 6. THE taking of interest from Israelites was forbidden by Moses; not, however, as if he absolutely, and in all cases, condemned the practice; for he expressly permitted interest to be taken from strangers; but out of favour to the poorer classes of the people. In order the better to understand his laws on this subject, we must call to mind the arguments on which the equity of interest rests. They are the following.

1. The danger of losing the capital, which danger, and the actual loss of it in some cases, it is but reasonable should be compensated by some profit.

This argument is not applicable to every loan: for sometimes there is not the least risk in lending; as, for instance, when we have a pledge in our hands, and are prohibited by no law from directly appropriating it to our own use, in the event of non-payment. Risk likewise, in general, only serves to raise the rate of interest. When five per cent. is allowed by law, on perfect security for the capital, a man will readily lend at four or three and a half per cent.; and if the

* What I here advance on this subject, will be found somewhat more fully detailed in my Dissertation, *De Mente ac Ratione legis Mosaiæ Usuram prohibentis*, the first which I ever delivered here at Gottingen, on the 30th of October 1745, and reprinted with additions in my *Syntag. Comment.* par. II.

security is such, that on an hour's warning he may have his money again, he will lend even at three, or two and a half. On the other hand, where the risk is great, he will not be willing to lend at the legal rate of five or six per cent. ; but will either refuse, or else unconscionably insist upon a higher interest, by way of payment for the risk he runs.

2. The advantage which the borrower derives from our capital.—If a merchant, with 100 rix-dollars of mine, gain 30, or 100 more, it, no doubt, costs him some trouble, and the exertion of his abilities ; but neither of these would make him this return, if he had not my money. Is it then hard or unjust that he should share with me a part of his profit ? The five or six per cent. allowed by law, is but a mere trifle compared to *it*.

We see here again, that this argument does not hold of all loans ; for, in many cases, the borrower will make no gain with the money, but merely avert some want, such as that of food or clothes, if he be in poverty ; or procure himself some pleasure, lawful or unlawful, or pay off some pressing creditor. In general, it only holds when money is borrowed by a rich man, who is a good œconomist, or by a person who can apply it to the purposes of trade, as a merchant does, or by one who means to invest it in landed property.

If, however, we rest (as writers on the subject often do) with only these two arguments already mentioned, as sufficient vindications of the equity of interest, there will still remain a great chasm in our reasoning, which can only be completed by the following consideration,

wherein we have at once the weightiest and most universal argument in its favour, viz.

3. That the profit which we might ourselves derive from our capital, by keeping it in our own power, ought, in justice, to be made good to us by the person to whom we lend it.

I will not here speak of the profit which a merchant may make of *his* capital ; for that is so great, that a debtor could hardly agree to make it good, and therefore merchants do not readily lend out their capitals : I only speak of that moderate profit which any one may in general gain. From time to time, pieces of landed property come to sale : A man that has the command of money may purchase them, and thence derive a yearly revenue, which is very secure. Allowing that such property, when leased, should yield only two or three per cent. (though the good steward, who manages it himself, will commonly have something for his trouble, and make it produce one or two per cent. beyond the rent), still it is highly reasonable and just, that another person, to whom the use of such money is given, should pay interest, and that somewhat greater than a farm bought with it yields of rent ; because it is always more advantageous and secure to vest money in land yielding but three per cent., than to lend it at four. Admitting too, that the borrower were to gain nothing by the loan ; that his poverty would oblige him to buy food and raiment with it ; or again, that he had gaming debts to pay with it ; still that does not affect the justice of exacting interest, because the creditor might always be making something of the money himself.

ART. CLIII.

Two different sorts of Interest, or Usury ; on Money, and on Produce lent—Remarks on the latter.

§ 7. MOSES distinguishes the usury which he prohibits among the Israelites in Lev. xxv. 37. into two sorts ;

1. Usury on money, which he calls *Neschech* (נִשְׁכָּח) ; although indeed this term is sometimes used in a more extensive sense. About the derivation of it, which belongs only to philology, most of my readers will not trouble themselves, and will probably thank me, when I spare them the deduction of etymologies that are doubtful, and serve, in the end, to throw no light on the subject. For the satisfaction, however, of those who are more curious, I refer them to my Dissertation, *De mente et ratione legis Mosaicæ Usuram prohibentis*, (Syntag. Com. II. 9.) where they will find some observations on the terms used by Moses on this subject.

2. The other kind of usury was that upon natural productions, such as corn and fruits ; and is called by Moses, *Marbith* (מַרְבִּית) and *Tharbith*, (תַּרְבִּית) that is, *increase*.

Of this, I must speak more particularly, because against its prohibition, an objection may be made, which is very plausible, and goes far beyond all that has been advanced under the preceding Article. The creditor seems, at first sight, to be too great a sufferer when he is prohibited from exacting usury upon pro-

produce ; for if he lends old dry corn a month before harvest, and is paid immediately after harvest in fresh corn, he receives much less than he had given. The bushel or pound of new corn, after it has lain some months, and become quite dry, will no longer stand out to the same measure or weight. This is a circumstance well known in the country to every farmer ; and even in town, to every housewife that attends to domestic œconomy.

Besides, the price of corn differs almost every year ; and if it falls, which as probably will happen fifty times in a century, as that it shall rise the other fifty times, the lender is a loser ; and his loss ought certainly not to fall on himself, but on the person having the benefit of the loan ; who, in other words, in order to avoid the perplexity of a calculation, should make it up by giving interest. These considerations seem actually to have weighed with the Roman lawyers, who allowed a higher interest on produce than on money. One of the reasons above stated, viz. the uncertainty of price, is expressly mentioned, L. 23. c. *de Usuris*, “ *Oleo quidem, vel quibuscunque fructibus mutuo datis incerti pretii ratio additamenta Usurarum ejusdem materiæ suasit admitti.*” Constantine fixed the rate of interest for fruits at fifty per cent* ; Justinian, that for money at six, and for fruits at twelve, and afterwards at twelve and a half per cent. ; and every person conversant in œconomy must be sensible, that there are cases in

* Codex Theodos. L. II. Tit. 33. *De Usuris* : For two bushels, three shall be repaid.

which the lender of produce will be a loser with a return of twelve and a half, and even of fifty per cent., because he may still receive less value than he has given.

And yet it is certain that if the creditor but so far understand the principles of œconomy, as to stipulate prudently the term of re-payment, there is no sort of loan that can be given free of interest, more safely, and even profitably to him, than that of produce ; and therefore in no case can interest be so fairly prohibited as here, provided only justice is sufficiently speedy, and may not be delayed for months, or even for weeks.

One thing is unquestionable, that if this very day (July 8th), a neighbour gives me a bushel, or a pound of corn, on condition of having it again after harvest, he is, *cæteris paribus**, a loser ; for the corn which he lends me is dry, and yields more meal ; while that which I repay, is fresh, and will give less, and on the 8th of July next year, will have lost considerably both in weight and measure, and consequently amount

* The limitation of *cæteris paribus* is certainly necessary ; for this very year (1772), notwithstanding the present high price of corn, and its probable fall after harvest, forms an exception. The rye of last crop is so extremely bad, and from its aptness to run in baking, yields such wet unpleasant bread, that a person having any great stock of it, might lend it to account, on condition of receiving immediately after harvest, grain of the present crop, which is more promising. In this case, he could only lose, in the event of a great fall in the price ; for if that should not happen, a bushel of *new* rye of the ensuing crop, will actually be of more worth than one of *old* rye, from its bad quality. A person thus lending corn at present, to receive it again after harvest, deals on speculation.

to less than the quantity lent me. The person ignorant of the first principles of œconomy in regard to grain, or even the great lawyer unacquainted with the plan of just calculation on the subject, who should meddle with such loans, would be sure to lose, and would every year, without knowing how it happened, be becoming poorer in consequence of them. The experienced œconomist, on the contrary, would be wiser ; and it was to a people consisting altogether of rural œconomists, that Moses gave his laws. *He* would perfectly understand the *ratio* of the drying of corn, the loss on the pound or bushel, or by whatever term it was denominated ; and if he were the son of a farmer, he would from his infancy have heard so much on this subject, that he would almost look upon his knowledge of it as innate. So that while certain loss would be sustained even by the greatest lawyer, (were he ignorant of rural matters) who should, however able as a framer of laws, here attempt to form a judgment on a point of œconomy to which he was a stranger, the good œconomist would merely find it necessary to stipulate for a repayment of produce of equal goodness, in the same month the next year in which he had lent ; say, on the 8th of July, to abide by the example given. Under this stipulation, he not only could not lose, but if he chose to hoard up, in order afterwards to sell dear, he might make immense profit. He would have no need for granaries, and people to turn his corn : it shrinks not to him, nor loses in measure and weight. It suffers nothing from mice, weasels, or thieves ; and without all expense, he gets back the very same quantity he at pré-

sent lends ; whereas he would otherwise, besides incurring much expense, lose, at least, one-twentieth part. A loan of this nature, therefore, prudently managed, brings its interest with it ; so that the judicious lawgiver may, on this subject, safely enact laws directly opposite to those of the Romans, which, in matters relating to corn, are seldom good ; and may prohibit all usury for the loan of produce. Only he must, in this case, take care to enforce summary justice, that the corn may be repaid at the stipulated period.—See the Dissertation, *De ratione*, &c. § vii.

The word properly signifying a *per centage*, *Centesimæ*, (מאת, *Math*) does not occur in the Pentateuch, nor do we find it until after the Babylonish captivity, in the book of Nehemiah, (v. 11.) where we are informed that the usurers had taken the hundred part of the money, fruits, wine, and oil, from their brethren, but whether monthly or yearly, it is not said.

In the Hebrew law, a lender on usury is called *Noschech* (נשח). In my German version, I have rendered this word, *Wechseler*, (*exchanger*), because it comes nearest to the meaning, and has been actually so applied by Luther, in Matth. xxv. 27. The word *Wucherer* (*usurer*), has an unpleasant sound, and would not exactly suit the passage in Exod. xxii. 24. *Noschech* properly signifies one who lends for a long time. Most loans are not *thus* given, from pure friendship, but rather with a view to repayment whenever the borrower's strait is relieved. But the man who lives by lending money, and reaps interest for it, will always be glad to lie long out of the principal.

For farther satisfaction on this point, particularly in

a philological view, I must refer the reader to the Dissertation already so often quoted.

ART. CLIV.

Moses permitted the taking of Interest from Strangers ; but in his first Law prohibited the exaction of it from poor Israelites ; and in that made forty years later, from Israelites in general.

§ 8. THE taking of interest from strangers, Moses has not only nowhere forbidden, but even expressly authorizes it in Deut. xxiii. 21. Hence it is clear, in the *first* place, that when he speaks of interest, he does not mean those immoderate rates of it which the modern Jews are charged with demanding, but interest in general ; and, *secondly*, that he does by no means represent interest as in itself sinful and unjust.

On the contrary, he made in favour of the Israelites, *three* statutes on the subject of interest, which are not, as is commonly imagined, precisely of the same purport ; for the last of them goes a great way farther than the two first, which were made in the *first* year after their departure from Egypt, whereas *its* date was in the eleventh month of the *fortieth* year.

In the first law, Exod. xxii. 24. mention is made of poor Israelites only, and from them the taking of interest is prohibited. In the second law, Lev. xxv. 35, —37. he still speaks only of Israelites that have waxed poor ; and they stand between those who had been obliged to sell their house or land, and those who, from poverty, were themselves sold as bond-slaves.—

This particular too, is more clearly expressed, that not only was no interest to be taken for money, but not even for victuals, of course for fruits and corn.

Hitherto there was no prohibition—in other words, it was allowable to take interest from an opulent Israelite ; but how much, was fixed by no law, that being left to the agreement of the lender and borrower. Such a state of the law may answer for some years, while the people are yet honourable, and unaccustomed to chicanery ; but it cannot always remain in such an imperfect state, without in a manner annihilating itself. Who is poor ? Who is rich ? are questions in fact difficult to solve. Many who with us are reckoned poor, and get alms from charitable funds, would, in Moses' time, have been called rich ; for a people just emerging from slavery, and wandering in a country so poor as Arabia, could not have much property. The little stock of furniture belonging to *our* poor ; their greater quantity of clothing, requisite in our colder climate ; and their changes of linen, would have been luxuries to *them*. Now suppose, that while a poor man begs a loan from his neighbour, a rich man, who can pay interest, makes him a proposal for the use of what money he can spare ; can we, in such a case, justly blame him if he gives the latter a preference, as his debtor ? Should the poor man find the loan indispensably necessary, he will be obliged to renounce the benefit of the law, and from the very peculiar circumstances in which he stands, promise to pay interest. Thus far the business has so much the appearance of justice, that at least *one*

judge out of every two would recognize such renunciation as valid, and declare for interest.

But now comes the opportunity for chicane. The man who has money to lend, gradually learns to understand his own interest too well ; and when a poor man proposes to borrow from him, he immediately pretends that he has been applied to by a rich man, (whom, it is obvious, he is too prudent to name) who is very anxious to have the same sum ; and thus he extorts from the poor man a renunciation of the law. Supposing, however, that the courts held such renunciations as not valid, or that the legislator declared them so, a new piece of knavery would arise, still worse than the former. The loan would absolutely be refused to the poor man ; and the pretext still boldly held out, that many rich persons were anxious to have the money, and would still venture to give interest for it. Farther the monied man does not interfere : if *they* agree to disown the law, he is satisfied with saying, *This is what a poor man could not do ;* or (what is better) he makes conscience of lending to the poor on interest, contrary to law. But in such a situation, the poor man soon hits upon a plan to prevent his applications for money from being rejected. He does not let his poverty appear, but affects to be in opulent circumstances. The lender, if, by pledge or otherwise, he obtains sufficient security, does not find it necessary to trouble himself farther about his situation, but believes, on his word, and from his appearance of honesty, that all is well with him. *Inter bonos bene agier oportet ;* and so he takes interest.

And of *ten* such cases, scarcely will *one* ever come before a court ; for the poor man is ashamed of owning his poverty and his lies (if he could not lie, he would be a cheat by profession), or he knows not how else to help himself. But allowing an action to be brought, the creditor can say, " This poor man has deceived me ; I had at the time many opportunities to lend my money to rich people, who offered, and had no fear to pay the interest ; but he told me lies, and said he was rich, else I would not have trusted him ; and surely, not the man of honour, but the knave, should bear the loss occasioned by his knavery ; the interest which I might lawfully have received, he ought, therefore, to pay me ; or rather, as I have already received it in weekly or monthly payments, he ought not to deduct it from the principal, for the recovery of which I now charge him." If this chicanery proves not sufficiently secure, the lender will require the poor borrower to bring him witnesses to certify his situation (and his friends, from compassion, will do him the favour of bearing him false witness) or else to insert in his bill, that he is in good circumstances, and only borrows to carry on his business more briskly ; much in the same way in which many who borrow for the purposes of gallantry, or to pay gaming-debts, acknowledge, in their obligations, that they mean to apply the loan really to their own use.

Such abuses must, sooner or later, compel a legislator, either to let his laws become useless, or to prohibit interest, without making any distinction between rich or poor debtors. And thus Moses did in the new law

which he enacted in the fortieth year after the Exodus. He let the exaction of interest from strangers remain permitted, or rather he expressly authorized it; but among the Israelites one with another, he totally prohibited it under every shape and name; and, hence, we see, that in the Psalms and Prophets, the person who lends out his money on usury, is looked upon as dishonest and unjust; just like the usurer with us, who takes immoderate and forbidden interest.

ART. CLV.

Peculiar Circumstances in the Israelitish Polity, which made the Prohibition of Interest more equitable than it would be among us, or which politically recommended it.

§ 9. ANY such prohibition of interest in our age and country, would, however, without doubt, be unjust towards lenders, a great hardship on the one half of the citizens, who have no landed property, and destructive to trade of every description; and among all the remnants of ancient laws, it would be difficult to find one, which, in the present state of society, it would be more foolish and hurtful to revive and enforce. It could only suit a state so constituted as was that of the Israelites by Moses. For, although several ancient legislators were hostile to interest, and were obliged to oppose it, while it bore hard on their subjects in the infancy of their state, yet in their prohibitions there is always found an absurdity, which under the Mosaic constitution entirely disappears.

With regard to the equity of it, of which we shall first speak; the three general arguments in its favour, already stated under Art. CLIII. suffer a great alteration when applied to the Mosaic polity. For,

1. From the summary nature of Asiatic justice, and from the *two* circumstances, (1.) Of every Israelitish debtor being generally possessed of landed property, and if not, (2.) Of its being in the creditor's power to lay hold of his person, his wife, and his children, the risque of lending was here much lessened. Now where there is such security, we must not, in general, ground the justice of interest on the danger of losing the principal: for it is not altogether without risk that we keep the money in our own house, not even when we take it to bed with us at night, and lay it under our pillow.

However poor the Israelitish debtor, his creditor had from him better security for a loan, than, in many parts of Germany (here in Hanover, for instance), he could have from the most opulent citizen, although on a judicial mortgage of landed property, of an hundred or even a thousand times greater value: for the tedious procedure of the law, and the *Beneficium taxationis vel Competentiæ*, renders the 30 guldens that I lend on a house worth 10,000, or an estate of 100,000 rixdollars, far less secure to me, than 30 shekels lent by an Israelite, to the poorest of his brethren, having only his paternal field, of perhaps a single acre, with ten children to maintain upon it.

2. The second argument for the equity of interest, is not applicable to the case of a poor man borrowing; and it is uniformly poor people alone, who are repre-

sented by Moses as borrowing. The case was, no doubt, very different with the rich; and because they could make profit by borrowing, the exaction of interest from them, was, by the first law, not forbidden. But in process of time a prohibition became necessary, because otherwise no poor man would ever have got any loan. And after all, it is but a very small, indeed the very least degree of justice, that I should have a part of the profit, which another, though without any loss to me, makes of my money. I do not thus demand the light, which, after lighting at my fire, he goes to work by, and earns money. We may, therefore, here be of opinion, that the person who having money that he does not, and cannot make use of at the time, lends it to another, without incurring the least trouble or risk in any respect,

Quasi lumen de suo lumine accendat, facit,

and may do so *gratis*, if the government or legislator, for other reasons, shall think fit so to decree.—I have in the course of my life borrowed books from many learned friends; but none of them ever thought of demanding interest for the use of them, although he knew that I would turn it to my advantage.

3. But it is the third argument in defence of interest that undergoes the most important and universal change. With us, a person may always invest his money in land; which yields only a moderate interest, it is true, but a secure one. But among the Hebrews, there could be no land for sale, but merely its crops, which alters the case completely, and makes *that* just in the Mosaic law, which, as things are now ordered,

would obviously be alike unjust and foolish. Let us for a moment suppose this case: *Sempronius* has some money to spare, and thinks of investing it in land; then comes *Titius*, and wishes to borrow it, perhaps with the view of buying a piece of land that *Sempronius* himself could purchase. Can we conceive a more unjust and unreasonable requisition than that *Sempronius* should lend without interest, money which laid out on this land, would yield him and his heirs three per cent. yearly; and if they farmed it themselves, maintain them besides, reckoning even on their wages and labour? Now the case of a person thus buying land with his money, is with us quite common, but under the Mosaic law it could never happen.

Hence we may see the folly of urging the Mosaic prohibition of interest on Christians, whose social and political situation is quite unsuitable to it. Before it could cease to be unreasonable in any country, the unalienable tenure of lands must be first introduced; and that again could not take place without the grossest injustice, unless every individual had his appropriation of land. Where the Mosaic laws concerning interest are to hold, the Mosaic laws respecting property in land must previously be established; and these can never be introduced without injustice, but in the case of a people at once taking possession of a country, after expelling its former inhabitants, and making an equal division of the land. Had men attended to the inseparable connection of these two sets of laws, our ecclesiastical code would never have adopted the Mosaic hostility to interest, nor would un-

informed but honourable Christians, ever have made conscience of taking it.

Another consideration taken in like manner from the Mosaic law respecting landed property, comes now to be attended to. With us, the people of fortune are of two sorts; some have landed estates, others money, which, if in great quantity, is also called *capital*. In England, where this distinction is much more frequently spoken of than here, the names which they bear are, the *Monied Interest*, and the *Landed Interest*. These two descriptions of citizens cannot justly be said to be by any means on a footing of inequality; or, at least, both can subsist together. But the prohibition of interest with us, would make a disparity between them altogether unsupportable; for while the latter could live on the rents of their estates, the former would be continually consuming their capital, becoming poorer every year, and at last reduced to beggary. The hardship of this disparity will be still more manifest, when we think *not* of the situation of those only who can earn something by their labour, but on that of their widows and orphans. Those of the person possessed of land, would still subsist on its produce, and would scarcely feel the want of their father; while the others would still be compelled to trench deeper and deeper on their capital, and might, before being capable of gaining any thing for themselves, be probably reduced to extreme poverty, unless the sum left them was very great. Let any one but put himself in the place of guardian to a family, whose father has left them nothing but money, and consider what he will do, when that money no longer

bears interest.—Now this is a distinction, which under the Mosaic polity entirely disappeared ; for all the people were landed proprietors, and every man left to his children an estate that could not be alienated in perpetuity.

This law respecting land at the same time prevented a contrivance by which, among us who *can* buy land in perpetuity, the prohibition of interest would become not only ineffectual, but afford the best possible opportunity of over-reaching any one who stood in need of a loan. The usurer who wanted to make immoderate profit, would sacredly observe the law of not lending on interest ; but then he would say to the landholder, that he was ready to buy his property ; and to this the latter would agree, on the right of re-purchase within a certain period. The price would of course be, not what the land was actually worth, but what interest it would yield ; so that if the parties agreed for six per cent., the land renting, for example, 60 rixdollars, would be sold for 1000, though with us, it might be valued at 2000. This land would thus yield interest to the furnisher of the money, and thus would the law be eluded ; and if at the term agreed upon, it could not be redeemed for want of money, it would be forfeited, and so the seeming purchaser would have it at half-price. Nor is this merely a *possible* piece of chicanery ; for in Scotland it is actually practised. There the ecclesiastical law prohibits, or (supposing the case now altered) at any rate *did* prohibit the exaction of interest ; probably because it regarded the Mosaic prohibition as a part of the moral law. But, to counteract the inconveniences of the prohibition,

they fell upon the device of the *proper wadset*, as it was called, that is, they sold the property repurchasably; and thus the creditor, transformed into a purchaser, had a very great advantage; for he was not obliged to give any account of what the property yielded, beyond the legal or usual interest*. This chicanery could not be practised against the Mosaic laws, because in Israel, land could not be sold, but merely crops.

In the laws of several ancient nations, we perceive that interest, of which no one complains in our days, was considered as a very odious demand; but this is by no means wonderful; for the farther we go back towards the origin of nations, the poorer do we commonly find them, and the more strangers to commerce; and where this is the case, people borrow, not with a view to profit, but from poverty, and in order to procure the necessities of life; and there it must be, no doubt, a great hardship to give back more than has been got. The debtor may thus lose all his property, and forfeit even his person and his liberty; and when this misfortune becomes general, the legislative power will perceive that the state suffers severely, in the loss of so many husbandmen and free citizens, who might bear arms in its defence: or a commotion among the people, of whom very great multitudes are now overwhelmed with debt, will compel the legislature to turn its attention to the prevailing distress. Laws will, of course, be then made, absolutely prohibiting interest; but

* See Letters from a Gentleman in the North of Scotland to his Friend in London. Part I. p. 294, 295.

they will be of no avail ; partly, because while every one has not land unalienable, they are not just ; and partly, because contrivances will be fallen upon to evade them : and the consequence will be, that none of them will be observed, and that arbitrary, that is, immoderate interest, will be secretly agreed on, and taken, sometimes in open violation of the law, and sometimes on the footing of a sale, and such like artifices.

Exorbitant interest is besides apt, in the infancy of a state, while the people are poor, to prove a great evil, from the general scarcity of money, and the great numbers that are in want of loans ; which makes the rate of interest rise, as if by auction, and gives the capitalist the choice of the highest bidder. The laws of ancient nations in such circumstances have a relation to those of Moses, arising from the infancy of the state ; but it only consists in their hatred and prohibition of interest ; and there is this difference too, that among *them* this prohibition was an act of flagrant injustice, and soon proved impracticable. Every prohibition was found to make the burden of interest only heavier : the universal outcries, or, perhaps, an insurrection of the sufferers, in order to resist it by force, compelled the lawgivers to promise them relief ; but how to grant it effectually, without injustice to the creditors, was a problem beyond their ability to solve. In fact, it is hardly possible to remedy this evil, unless where a legislator is so circumstanced as was Moses ;—about to occupy an enemy's country, and to partition it among his people, and then to make laws suited to such a state of property. If the Israelites had not

conquered, and, by a rapid series of victories, *speedily* conquered, Palestine, as Moses had, in God's name, promised them, his laws against interest would have been as preposterous and useless as the ancient Roman laws were.

Politically speaking on the subject, it would, in modern times, be the greatest error which a legislator could commit, to prohibit interest; for without it, commerce can never flourish. A merchant finds the command of money necessary, or at least very advantageous for the increase of his trade; but who will ever lend him without interest, considering to how many risks, which no stranger to trade, and not even he himself, can foresee, money embarked in trade is exposed, and how much profit he expects from the use of it? Were it possible here in Germany, effectually to prohibit interest, or, what is the same, to prevent traders from giving credit from *fair* to *fair*, or from selling goods at a cheaper rate for ready money, the consequence would be a perfect stagnation of trade, and a multitude of bankruptcies. In Holland and England, such a prohibition would be still more hurtful. Indeed, according as the trade of a country becomes greater, the prohibition of interest becomes the less necessary; for interest is generally very moderate where trade flourishes, and a nation gets rich. But it was not to a commercial nation that Moses gave laws, but to a people that was to consist entirely of husbandmen, and in this point very nearly resembled the Romans, according to their original constitution; for he had it not at all in his view to encourage commerce; (see Art. XXXIX.) so that *his* prohibition of

interest was not impolitic, although with us it would be highly so, and give a death-blow to commerce.

One doubt may, perhaps, yet arise, viz. whether Moses, by authorising the exaction of interest from strangers, may not have rendered his own law ineffectual, and oppressive to the Israelites, whom it was his object to favour? For the natural consequence of such a permission would be, that people would lend to strangers, to Sidonians, for instance, and the Phœnicians in general, but refuse loans to Israelites.—This I admit, in the case of large sums; but then the poor, who were here the peculiar objects of Moses' concern, could not borrow large sums; and as to the rich doing so, Moses did not trouble himself about it, because it was not his object to make the Israelites a trading nation. When a poor man borrows, it is but a trifling sum; and here a foreigner will hardly stand in his way. For it is very obvious, that persons not living immediately on the frontiers, and not much acquainted with foreigners, were not likely to be much disposed to lend small sums even *for* interest, *out of* the country, and least of all to merchants. Let us only put the case of a Hamburgh merchant at present, wishing to borrow money here at Gottingen, and offering higher interest than is usual with us; perhaps a man that had 20,000 rixdollars to lend, might suffer himself to be tempted with such an advantage, and make inquiry into all circumstances, and even travel to Hamburgh for more complete satisfaction; but no reasonable person having only 100 rixdollars to lend, would risk them without enquiring into particulars, which would cost him more trouble and expense than

the small profit he could make, would be worth ; so that if he could find no other borrower, he would rather keep his money by him, without reaping any interest whatever. And if we thus think, although by the aid of posts a correspondence between Gottingen and Hamburgh is now easier than it formerly was between places but a few miles distant ; how much more decidedly must an Israelite have thought in the same strain, while the world was yet unconnected by posts and correspondence ; while every letter required a special messenger ; while interest and principal could no otherwise be paid than by direct transmission in money ; and while the Canaanites were a people altogether opposite to him in laws, and manners, religion, and whom he held in abhorrence.—Add to this, that, by ancient law, loans, in the event of war, were utterly lost ; which made it still the more dangerous to lend money to foreigners ; and besides, that the Israelite was ignorant of the nature of the Phœnician law, which must have been very different from his own in matters of debt, because the Phœnician polity was founded on commerce ; that the Phœnician, seldom possessed of land, could not give that security which was usually to be obtained from an Israelitish debtor ; and that, in general, no loans are more liable to risks and unlucky accidents than those which are given to trading people. Taking all these considerations together, I am inclined to believe, that an Israelite would seldom give a loan to a neighbouring Phœnician on any other terms than that of a strong pledge ; which would make the downright trader little disposed to borrow from him ; more particularly, as transporting

the pledge rendered the transaction so much the more troublesome.

Whether in the time of Solomon, when commerce sprung up, new laws were made to facilitate the obtaining of loans by mercantile people; as, for instance, whether, allowing the prohibition of interest still to continue in force, a man, if he vested money in trade, was permitted to join in partnership with a merchant, and to share a certain proportion of his profits, is a question which must occur to every one conversant in legislative policy; but which, for want of historical documents, I am not in a situation to answer. It is even uncertain whether Solomon encouraged his subjects to trade; or whether he did not rather wish to carry it on solely for the advantage of the crown; in this latter case, he might leave the matter entirely to the operation of the Mosaic laws of interest, as only strangers would be concerned with him. See Arts. XXXIX. and LIX.

ART. CLVI.

A Loan regarded by Moses as an Alms-deed; of course, the subject of his Exhortations, but not of Legal Constraint.

§ 10. MOSES himself was so far from thinking of opulent persons, who might seek for loans with a view to profit, and so far from facilitating their attainment of them, by authorizing the payment of interest, which would have been a hardship on poor people that stood in need of the use of a little money; that we find him

actually representing a loan as a sort of alms given to the indigent, the practice of which, as he could not, strictly speaking, enforce it by a civil enactment, he recommends very earnestly as a legislator. One of the chief passages to this purpose is Deut. xv. 7, 8; and in the verses immediately following, he goes still a step farther; declaring it an act of the *basest* * avarice, for a person to refuse a loan to his poor brother in the *sixth* year, because during the *seventh* he could not sue him for the debt, but must let it lie over till the eighth. The giving a loan in the sixth year, he represents as a good work, which God by his blessing would otherwise recompence, ver. 10; and in Deut. xxiv. 13. he declares the restoration of a pledge indispensable to the debtor, in other words, the giving a loan without a pledge, to be an act of charity†, which would certainly bring down the special blessings of

* What Luther here renders *Belialstück* (דבר בליעל) is better translated, *a base, or wicked thought*. In the New Testament, indeed, and in the Jewish language after the period of the Babylonish captivity, from which the Israelites returned much enriched in names for the Devil, *Belial* means the Devil: but in the Old Testament it never has this meaning, but, according to its derivation from בלי *non*, and יעל, *altus fuit*, it either signifies, *base, ignoble*, or else is a name for the *subterraneous world*, as in Psal. xviii. 5.

† צדקה, which Luther here literally renders *eine Gerechtigkeit*, (righteousness) is by the LXX. translated *alms*; and them I have followed in my German version, because the term *righteousness*, or *good deed*, is not only in Arabic, Syriac, Chaldee, and Rabbinical Hebrew, the usual word for *alms*, but occurs in that sense sometimes even in the Hebrew Bible. At any rate, this *special* signification is more suitable to the sense of Deut. xxiv. 13. than the *general* term *righteousness*.

heaven on the compassionate creditor, in his temporal concerns.

Now this doctrine of the legislator, which he thus once for all inculcates, is perfectly just. A *loan* given to an industrious labourer, and which is most honestly repaid, or even one, for which the creditor previously has the fullest security, and runs no risque of losing a single penny, may confer a much greater favour than even a *gift* bestowed on the poor man: for the latter is, perhaps, sufficient to buy him bread in the mean time, but not enough to set him up in business, and thus enable him to earn his bread all his days. Fourteen thousand four hundred *pfennigs*, given at the rate of a *pfennig* per day, to a poor person for 39 or 40 years in succession, is no act of charity, but rather of cruelty or ignorance, because it compels him to be idle, and weans him from labour: for he must go to receive his *pfennig*, and if he is able to do so, he might perhaps earn it in the time of going. (See Art. CXLII.) Now the same sum of 14,400 *pfennigs* converted into 150 *half guldens*, and one given him weekly for three years, forms a real and rational act of charity, because it contributes in some degree to his livelihood, without wasting his time. But if the said sum, or, what is much the same, 50 *rixdollars*, be all at once *lent* to an industrious, but reduced man, to enable him to set his trade a-going anew, they may at once make him so successful, that he shall be able to maintain himself and his family comfortably, and to repay the money without the least difficulty. There are even cases in which it is possible to foresee such an event, with a de-

gree of probability approaching very near to certainty. And can it then be any longer a question, whether a loan of 50 rix-dollars, is not a greater favour than a gift of the same sum, given at stated intervals, in *half guldens*, or *gröschens*, or by superstition, presuming on the merit of its good works, divided into *pfennigs* for the same purpose?

It is quite obvious, that a legislator cannot, in a civil sense, and with the sanctions of sovereign authority, compel the practice of almsgiving of this nature. Without tyranny on the one part, and slavery on the other, no magistrate, even in a state consisting of but one small city, can know who has money by him: nor is it possible almost, without recourse to despotic and violent measures, so to ascertain, by any legal process, who is really and truly a poor man, as to distinguish him with certainty from the impostor, who but represents himself as such. Hence a magistrate would not be able to judge, whether *Caius*, when asking a loan, was truly poor and an object of compassion, and *Titius*, to whom he applied for it, had more money by him than he had necessarily occasion for. But it would, besides, subject the rich to most intolerable oppression from the poor, were they *bound* to lend them their stock of cash. People give in charity what they think fit: but the person who wants a loan, specifies a certain sum, and if I *must* give him that sum, he can exercise a more rigorous right of taxation over me, than the most arbitrary despot of the East can enforce. In a country where such were the laws, every one would be tempted to plead poverty, in order to get hold of his

neighbour's ready money ; and all persons in opulent circumstances would thus be compelled to make their escape from it.

I therefore consider the passage in Deut. xv. 7,—11. as not properly a law accompanied with the sanction of authoritative constraint, but rather as an exhortation given by the lawgiver. But still, as such, it is something more than an exhortation of the moralist or preacher : for on those who notoriously disregard it, it leaves a certain stain, on their character as citizens, and subjects them to a reproach against which they can make no defence, and must therefore bear it with patience. Still, however, it differs from a compulsory civil law, because it leaves it to every man's judgment to determine the case to which it applies ; that is, when solicited for a loan, no magistrate inquires, but he himself, without having to account to any one, knows and decides, whether he has money to lend ; inquiring also, and deciding, whether the applicant is really poor, and whether his security is satisfactory : for it is not the making presents of money to impostors pretending to borrow, that the Mosaic exhortation inculcates, but the duty of lending where your benevolence will not be abused.

That such an exhortation with a promise annexed of the divine blessing, appears much more suitably in laws given by immediate orders from God, than when their framer does *not* speak in the name of God, I need not observe. Nevertheless, even a lawgiver of these days might, if other circumstances stood not in the way, still with great propriety recommend lending to the poor as

a very beneficial service*, and might, with assurance of God's approbation (*sub spe rati*) promise the divine blessing to reward it. But if the creditor can have no sufficient security for repayment, either because the laws are too favourable to the debtor, (from a mistaken clemency, and which both poverty and industry should lament, because both find it, in such a case, a hardship to obtain necessary loans); or because justice is tedious, or expensive, and the debtor is not uniformly subjected to costs, but the *meum* and *tuum* is left to the decision of the judge; or because there are no *objecta executionis* to lay hold of; in such cases, the legislator will in vain recommend the duty of lending; and, indeed, his exhortations to it will come with a very bad grace. It will be thought, Why does he not find us better security, and make better laws? Or, (where the sovereign himself speaks in the laws) Why will he not, if he be so very compassionate, rather become surety himself for those to whom he exhorts us to lend, and take upon himself those losses that arise from the mildness of his laws?—Under the Mosaic law no such evils existed: for thereby every creditor might, if he chose, have every possible security. Where every debtor is generally in possession of land; where his person, his wife, and his child, may, in case of non-payment, be brought to sale; and where justice is expeditious, and costs the creditor

* This sometimes actually takes place, as in the case of a want of seed-corn. The *emprunt forcé* in time of war, for payment of contributions imposed by the enemy, has a still more formidable name and reality.

nothing ;—there and there alone, may the law venture to exhort to the duty of lending, and brand with the stigma of *baseness*, the unfeeling man, who withholds from his brother when in need of his aid, a loan, which he might furnish him with perfect security, and without the smallest risk.

ART. CLVII.

In the Seventh Year, a Poor Debtor could not be sued or harassed, because there was no Crop.

§ 11. ONE privilege only did Moses concede to debtors, and among a nation of husbandmen it was, indeed, an indispensable one. In the seventh year, during which all the land lay fallow, no debt could be exacted from a poor man, because then he had no income whence to pay it. The law to this effect, is in Deut. xv. 1,—11. To debtors not poor, this privilege did not apply ; for the words immediately following in ver. 4. are, *save when he is not one of the poor among you, &c.* on which words others have put this strange construction, as if Moses, in a law enacted in favour of the poor, had promised there should be *no* poor among the Israelites ; but they thus get into an embarrassment, in comparing one passage with another ; since in ver. 11. of this very chapter, he says, that there should *always* be poor persons among the Israelites*. This law, besides, applied only to the

* It is commonly maintained that there would have been no poor among the Israelites, if they had kept God's commandments, and

Israelites, and not to strangers who possessed no land, and, of course, were not in the seventh year differently circumstanced from what they were during the other six. Them, therefore, creditors might then sue for the payment of debt, with all rigour.

ART. CLVIII.

Novæ Tabulæ.

§ 12. MANY have been inclined so to understand this law, as if in the seventh year *all* debts were to be

that Moses says as much, ver. 4, 5 ; but that because God foresaw the Israelites would never fulfil that condition, he therefore said in ver. 11. *the poor would never cease among them.* But allowing that this were correct, and that God had chosen to bind himself not only to bless the people in general with temporal blessings, but also, contrary as it might be to the common course of things, so to order events, as that there should be no poor among his people, while they kept his laws, (a great misfortune it really is for a people if they have no poor) ; but that withal, he well knew that this condition would never be kept ; how could he have ever thought it necessary, in a law for lending to the poor, to say, *though there shall be no poor among you ?*

I am aware, when I recur to Luther's version of this passage, that much of what I have now written, will be obscure to my readers, on their observing that he renders it, (*Es soll allerthings kein bettler unter euch seyn*, that is,) *There shall absolutely be no beggar among you.* I therefore observe, 1st, That not beggars, but the poor, are here spoken of ; and, 2dly, That the Hebrew here will not bear *his* translation, but one or other of the two following ; either, *although there shall be no poor among you ;* or, *unless he* (the borrower) *should be none of your poor.* I prefer the latter, because I cannot think that God would, under a condition which he knew would never be fulfilled, promise something so very repugnant to the usual course of nature ; and then in ver. 11. take away all hope of it again.—See my German version of the passage,

cancelled ; and the Talmud has actually adopted this explanation, endeavouring withal to guard against the evils of the year of release, by all manner of moral considerations. I have already (see Art. XVIII.) declared, that in this work I have nothing to do with the Talmudical jurisprudence, and that I consider the Talmudists as bad expositors of the Mosaic laws. But whoever has any desire to know what they say on this subject, and does not understand the Talmud itself, will find it, in Latin, in *Surenhuse's Mischna*, Part I. p. 198, 199. ; or in German, in *Rabe's*, Part I. p. 144. —I shall here only mention the reasons why I do not accede to this explanation of the law in question, on Deut. xv. 1,—11.

That every seventh year, all debts should be extinguished, is a law so absurd, so unjust, and so destructive to the interests of all classes of the community, that we are not warranted to ascribe it to a legislator, nor even to a turbulent tribune of the people, unless he has enacted it in terms the most express, and such as leave not the shadow of a doubt as to his meaning.

There may, I grant, extraordinary cases occur, which render the extinction of all debts necessary ; particularly when, by the charge of immoderate and usurious interest, or by any other artifices of monied men, they have become so enormous as that the state can no longer subsist under them. Thus among the Romans, *Novæ Tabulæ* were sometimes projected ; a measure, however, which, by reason of the great confusion which it must have made in the commonwealth, was dreaded by every good citizen, and even by those that were themselves debtors, as a very great

evil. I will farther admit, and, therefore, I am here sufficiently liberal, that it may be a problem in politics, whether it might not be expedient that all debts should be extinguished every fifty or a hundred years, in order to avoid law-suits, which extend to so long a period, to secure property more effectually, and to prevent children, and grandchildren, from groaning under the heavy burdens of the debts of their forefathers? Such a periodical extinction of debts, in regard to which, however, to make it just, we must presuppose an expeditious administration of justice, in order to bring law-suits to an end before the year of remission, would have a strong resemblance to legal prescriptions; nor should I have had any thing to object to it, if Moses (and thus Josephus explains him) had ordained the extinction of debts only every fiftieth year. But a septennial extinction of debts with *Novæ Tabulæ*, (a phrase which made the Roman state to tremble, when a tribune of the people but uttered it), how great would be its injustice, and the misery it would occasion! Under such a law, none would be so foolish as to lend; so that those who stood in need of loans, would only be in a worse predicament, through the mistaken clemency of the legislator. But what, above all, would be the absurdity of the exhortation in ver. 9, 10. *to lend to the poor, and not to entertain the base thought of the near approach of the seventh year; but however near it were, to let him have whatever he wanted*, were all debts cancelled every seventh year? Neither property nor honour could be secure, were such an exhortation respected. The poor might, then, in the sixth year,

impose the greatest hardships on the rich, and borrow from them to any extent, without repaying a farthing. —The man that begs an alms must leave it to the pleasure of his neighbour to give what he thinks fit; and if a rich man, in the excess of benevolence, give orders to let no poor person go away unsupplied, the administration of his bounty may be suitably regulated; but he who seeks a loan, specifies the sum which he wants to borrow, and if in the seventh year he is under no obligation to repay, he may, on the sixth, under the name of a loan, extort as much as he chuses from others. If you refuse him, and will not allow yourself to be imposed on, he has it in his power *legally* to insult you, and to call you a *scoundrel*, without your having a right to complain, or chastise the insult; which is much the same as rendering your character infamous. No Asiatic despot has recourse to such a rigorous measure to extort the property of his miserable slaves; but in this case, every beggar might do so. What a horrible state of slavery, not under one tyrant, (whom it might be possible to satiate, and who cannot know which of his subjects has money to give him), but under as many thousands as chuse to wear a coat of rags, and at whose mercy, if other means of effecting their extortions fail them, the character of every rich man at any rate lies, as they may freely asperse it under the protection of law? Of the injustice of such a law, I shall say nothing; for of that every one will be sensible, who places himself in the situation of a person, aware that to-morrow all debts become legally cancelled, to whom comes a poor man to-day, not asking an alms at the

good pleasure of the giver, but demanding a loan, determined in its magnitude by himself, and which, he is reminded, the law enjoins *him* not to be so hard-hearted and selfish as to refuse. I only ask this question, What country could subsist under such a law? Who could have any inclination to industry, or the acquisition of riches, if every seventh year his earnings lay at the mercy of every beggar? A country where laws so unjust prevailed, every man of wealth would be either compelled to leave, (and the sooner he did so the better); or else, as is necessary under tyrannical governments, where the greedy despot seeks to lay hold of the property of his subjects, under every possible pretext, he must affect poverty, and live like a beggar. In either case, the poor, who most generally derive their subsistence from the rich, will be placed in circumstances truly deplorable.

Has Moses, then, by the tenor of any of his other laws, deserved to have the reproach of such an absurdity cast upon him? By no means, in my judgment; and therefore it would be but fair to put upon his law concerning the seventh year, not an irrational, but a rational construction. The word *Schimitta* (שמיטה) employed by Moses, and which Luther renders *Erlass*, (Eng. vers. *release*) is, like many other terms of law, not so etymologically clear as could be wished. At the same time it includes nothing that indicates a total remission of debt. By a comparison with the Syriac and Arabic languages, its original signification would appear to have been, *suspend*, or *let fall*; but this I cannot here illustrate, because where this work is printed, there are no Arabic types; and the majo-

rity of my readers being unacquainted with Oriental languages, will gladly dispense with etymological reading. The complete phrase, ver, 2, 3. means, *the creditor shall not in the seventh year let fall his hand, (Schamot Jado)*; which is equivalent to saying, he shall not seize the debtor; or, as a Roman would have expressed it, *manum non injiciet*; and if there should be any doubt how Moses wished this to be understood, he himself explains it in ver. 2. by saying, *he shall not exact it of his debtor*. Here follow the words as I translate them to a person who prefers having them, though in bad German, yet more close to the Hebrew; *Nach Ablauf von sieben jahren sollst du Schemitta machen. Schemitta aber est, dass jeder Glaubiger der seinem Nächsten geborget hat, seine hand fallen lässt; er soll seinem Nächsten und Bruder nicht exsequiren.* (In English; “After the expiration of “seven years, thou shalt make a *Schemitta*; but a “*Schemitta* is, that every creditor who has lent to his “neighbour, let fall his hand; he shall not have recourse to legal execution on his neighbour and brother.”) Now, let every man judge for himself which of these two things Moses intended—whether,

1. In the seventh year, no debtors should be distressed, or debts sued for; which was a very rational precept, because then the Israelite derived no income from his land—or whether,

2. In the seventh year, all debts were to be completely and for ever extinguished, and without the creditor having it in his power to demand them either in the seventh or eighth, or any subsequent year;—a precept which has not the most remote rational

connexion with the *fallow* of the seventh year, but would have been altogether arbitrary and insulated. To find it in the words of Moses is, in fact, very difficult ; and from Josephus, as we shall soon see in passing, it is certain that, previous to the destruction of Jerusalem, the Jews were quite unacquainted with any such strange law ; although afterwards, when the people had no longer a government, the Rabbins, theorizing in their schools on the Mosaic laws, imagined it to be contained in the passage before us.

Whether Moses, in the fiftieth year, or year of jubilee, ordained a total extinction of all debts, which were then to be held as prescribed, is quite another question. I have already admitted it as problematical, in politics, whether any such periodical and semicentennial extinction, or, if you please, prescription, would have been really expedient ; but, at any rate, it had not the injustice of a septennial one ; for in the course of fifty years, the creditor had time enough, if justice was well administered, to recover his loans, and needed but to have as much foresight, within a short period before the fiftieth year, as to lend no more than he knew how to get repaid before the time of prescription ; as the exhortation of Moses to lend, although it applied to the case of the seventh year, was never meant by its author to extend beyond the fiftieth. From a law of this nature, a discontinuance of credit-giving was not to be apprehended ; because for forty years and upwards, the monied man needed be under no hesitation in lending, if the administration of justice was but prompt ; and at worst, but once, perhaps, in a man's life, could there come a time

when no loan was to be had, that is, in the forty-eighth or forty-ninth year.

I must, moreover, admit that, for the reality of *Novæ Tabulæ* every fiftieth year among the Jews, we have more ancient and credible evidence than that of the Talmud. Josephus, who was born 23 years before the destruction of Jerusalem, and of course must have very well known what was the law on this point, while the Jews had yet a political existence in Palestine, has these words, (*Antiq.* III. xii. 3.) *This fiftieth year is among the Hebrews called the year of jubilee ; and then debtors become free from their debts.* He is, therefore, an unexceptionable witness, that in his time, all debts were held as extinct, not in the seventh year, as the Talmudists assert, but only in the fiftieth. But whether this was actually Moses' intention, or whether the Jews, after their return from the Babylonish captivity, misunderstood his meaning, is uncertain. In fact, Moses nowhere says, that in the year of jubilee all claims were to be cancelled: it only seems to follow from the analogy of his laws concerning the sale of lands, and slavery. (See Art. LXXIII. and CXXVII.) But even, as an inference from these laws, it is attended with one great difficulty ; for although it appears certain, that after the fiftieth year, a creditor durst not seize the land nor the person of the debtor, nor even the persons of his children ; yet this only implies that the *Objecta Executionis*, which are most generally and most easily to be got at, were now beyond reach ; not that the debt was thus wholly extinct, and could by no other means be made good. We cannot at present enslave or sell every debtor,

with his wife and children ; and if he has no land, we cannot, of course, lay hold on *that* ; but our claims do not therefore cease ; and we can generally contrive to find some other object to attach for payment. —I am, therefore, once more ready to acknowledge another chasm in *our* knowledge, or rather (not to involve others in the fault with myself, I should have said), in *my* knowledge of the Mosaic law.

After the return of the Jews from the Babylonish captivity, we actually find one instance of regular *Tabulæ Novæ* ; not, indeed, as if authorized by the Mosaic law, but in consequence of a crisis altogether extraordinary. This took place during the government of Nehemiah, who effected on this occasion, by assembling the people together *against the rich*, what many a Roman tribune would fain have done ; for, by an address to the rich, he prevailed on them to relieve the public distress by a relinquishment of their claims on their poorer brethren. The history of this event, which does not properly belong to the Mosaic law, but is rather an exception, is recorded in Neh. v. 1,—13. A poor people just returned from a miserable captivity, as yet without all trade, and far from numerous, and thus placed in the very circumstances that render the pressure of debts and the payment of interest most severe, had begun to rebuild Jerusalem. Some rich men among them, contrary to an express prohibition of the law of Moses, had lent money on interest, and it would appear (ver. 11.) exorbitant interest too, insomuch that the load of debt had increased to such a degree, that a great many of the poor had been compelled to surrender their lands to

the rich, and others to sell their children, or become slaves themselves. And even those who had not done so, saw themselves on the eve of being reduced to the same hard necessity, if their creditors demanded payment of their loans. The debts which thus oppressed the poor, in consequence of usurious augmentation, had been partly contracted in a time of extreme dearth, for payment of the tribute due to the king of Persia. Hereupon there now arose an universal outcry; and, in order to silence it, Nehemiah, a very honourable and disinterested patriot, who did not so much as once take from the people the accustomed salary as governor, but seems to have lived entirely on his income as cupbearer to the king of Persia (v. 14,—19. ii. 1,—7.), had recourse to a very summary expedient, perhaps scarcely justifiable but in the ardour of patriotism. He called an assembly of the people *against the men of wealth*, to whom he represented in very plain terms, that the people, but just delivered from captivity, were by *their* usurious exactions again reduced into a state of bondage still more oppressive, and hindered in their exertions for the restoration of their city and country. The consequence of this measure was, that these oppressors found themselves compelled to promise, and Nehemiah made them confirm it by an oath, that they would not only remit the debts yet due them, but likewise restore the lands and slaves already taken in payment.

ART. CLIX.

Of borrowed Beasts of Burden.

§ 13. IN the case of a borrowed beast of burden, as an ox, an ass, or a horse, receiving any hurt, or coming by his death, Moses made a distinction between such as were lent for hire, and those lent *gratis* from good will. The former were not paid for, on the principle, that if the owner stipulated for the profit of hire, he had, by the rule of *Casum fert Dominus*, to bear the loss. Those, on the contrary, lent from friendship, *were* paid for by the person who had the use of them; unless when the owner happened to be present, and of course a witness himself, that the borrower was, by no imprudence, to blame for any misfortune that befel them, Exod. xxii. 13, 14.

CHAPTER XII.

PART III. — OF INJURIES DONE TO THE PROPERTY OF
OTHERS, AND GENERAL CONDUCT IN REGARD TO IT.

ART. CLX.

Reparation of Injuries done to another's Property.

§ 1. HE who injures the property of another, is *naturally* bound to make restitution ; and it is just as natural that he should answer for any mischief that happens to be done by his bond-servants, or his cattle ; or, if he does not chuse *that*, at least transfer *them* to his neighbour for indemnification. Moses, who did not compose *Institutions* of law, nowhere teaches this doctrine under any general proposition, but presupposes natural equity as known and established by usage. At the same time, we find him making the following express ordinances respecting particular injuries done to property, from the analogy of which, conclusions may be drawn as to other cases.

1. *Whoever killeth a beast belonging to another, shall compensate it, beast for beast.* This ordinance appears only incidentally in Lev. xxiv. 18. among criminal laws. Moses had previously spoken of homicide, and meant only, in the case of a beast being killed, to specify this limitation, that it was not, like the killing

of a man, to be punished with death ; restitution in kind being to be held sufficient. And as he gave laws to a people that lived by agriculture and cattle-breeding, where, of course, every one usually had beasts, and when they happened to be hurt, could not be fully recompensed in money, (because money could not be yoked in the plough, and sometimes it might not be possible to procure an ox for money, at least at a fair price), he therefore appointed reparation for injuries in such cases to be made, not in money, but in kind ; and it was not necessary that he should mention (for it naturally follows), that the beast given in reparation, should not be worse than the one killed.

2. If an ox pushed another man's servant to death, his owner was bound to pay for the servant 30 shekels of silver, as a medium price, Exod. xxi. 32. (See Art. CXXIV.) The ox was likewise stoned : but that belongs not to the subject now in hand, where I am treating not of punishments, but of reparation for injuries.

3. In the case of one man's ox pushing another's to death, it would have been a very intricate point to ascertain which of the two had been to blame for the quarrel ; and, therefore, both owners were here obliged to bear the loss. The living ox was sold, and the price, together with the dead one, equally divided between them, Exod. xxi. 35.

4. If, however, the ox had previously been notorious for pushing, and the owner had not taken care to confine him, this made a difference : for then, to the man whose ox had been pushed, he was obliged

to give another, and the dead ox he got himself, *Exod. xxi. 36.*

5. If a man dug a pit, and did not cover it, or let an old pit belonging to him remain open, and another man's beast fell into it, (Moses here mentions an ox or an ass only by way of example, and therefore does not exclude other beasts), the owner of the pit was obliged to pay for the beast, and had it for the payment, *Exod. xxi. 23, 24.*

6. That through the imprudence of herdsmen, fire is often kindled in the fields, and does mischief, is very well known among ourselves; but in this case, our laws rarely speak of restitution, and generally inflict corporal punishment; because our herdsmen are too poor to pay the damage: and by the thoughtlessness of no other description of persons, is fire likely to break out in the fields. Among the subjects of the Mosaic laws, on the contrary, the herdsmen were commonly the most opulent, (see Art. XLIV.); and if even their servants were guilty of this piece of imprudence, the master might be made answerable for his servant with no less justice than for his ox. Moses, therefore, ordained, that when a fire kindled in the fields did any damage, he who kindled it, was to make it good, *Exod. xxii. 5.* But that from hence no conclusion can be drawn in regard to the case of a fire breaking out in a city through any one's imprudence, every person will perceive, who is in any measure acquainted with legal subjects.

ART. CLXI.

*What was and was not permitted on another's Land—
To eat Ears of Corn or Grapes there, was allowable,
but not to gather them into a Vessel, nor yet to feed
Cattle.*

§ 2. IF a man was passing along another's field, he was allowed to pluck ears of corn to eat, but forbidden to use the sickle, Deut. xxiii. 26. This pretty much accords with what is common among ourselves; for no owner of a field, unless he wishes to render himself ridiculous by his niggardliness, will hinder a passenger from plucking his ears of corn, and eating them. But the liberty of the stranger, by the Mosaic law, perhaps extended still farther; for if the poor man had plucked up whole handfuls of ears, and carried them off, I do not thence see how he could have been found punishable, or how it could have been prevented. I do not take upon me absolutely to decide the point, because the law is very briefly expressed. I only remark, that this very law, which among us would be very unjust and pernicious, had quite another aspect among a people consisting entirely of husbandmen: for where every citizen, or, in other words, every one belonging to the nation, has his own land, one will not be apt, from avarice, to tear up another's corn, because he must expect that his neighbour will retaliate in like manner upon his. It will, therefore, most probably be only as he travels along, that he will eat a

few ears for pleasure, and that may readily be allowed him.

In the verse immediately preceding (Deut. xxiii. 25.), Moses has an ordinance respecting vineyards, which may to us appear more singular, and to bear harder on their owners. The stranger that came into another's vineyard, was authorised to eat as many grapes as he pleased, only he might not carry any off in his basket, or other such vessel.

To my illustration of this law, I must premise, that I am not a native of a wine country; having been born at Halle, on the extreme verge of the wine district of Germany, and where vineyards are so rare, that under such a law they could not possibly exist. In such a climate, every individual bunch of grapes is not indeed a rarity (for that I cannot say of my native country), but, at any rate, an article of sale, and worth money. Perhaps, therefore, a native of a more southern region, where wine is produced in greater abundance, would be able to explain this part of the Mosaic law better, and would find it more agreeable to justice.

But besides all that persons acquainted with wine countries could say, there is this additional circumstance here to be attended to, and which is quite inapplicable to all *our* wine countries, viz. that every Israelite had his paternal land; and if he lived in a district where wine was grown (which was the case in most parts of Palestine, the country being mountainous), he probably had a vineyard of his own, as well as his neighbour. The right, therefore, to eat one's fill in another's vineyard, was, in most cases,

merely a *jus reciprocum* ; and thus I might with freedom satisfy my appetite, wherever I saw grapes before me ; single bunches being there no article of sale. This to travellers was a gratification always acceptable, and a piece of courtesy that cost the owners but little ; and to those who had no land, that is, to the poor, it was a sort of alms, or, at least, a comfort, that they could thus satisfy their appetite without being chargeable with theft, or injustice. If the owner of a vineyard found them too assiduous, or their visits too frequently repeated, there was nothing in the law that hindered him from inclosing it, or turning them out. Only they could not be declared thieves, if they but plucked the grapes, and ate them within the vineyard.

We shall frequently see, that the laws of Moses manifest a certain degree of indulgence and kindness to the cravings of nature ; which, far from wishing to torture, they would not even have exposed to any temptation, that might lead a man to theft ; (Art. CXXX.) This is a point of great importance to the preservation of the moral character of a people. Hunger, or appetite, often hurries a man of the most honourable principles to devour grapes and other eatables that are not watched ; if his conscience make this theft, the great boundary that distinguishes the man of honour from the thief, is in a manner overstepped, and if this happen often, he will at last become a thief in a higher sense, having lost all conscience, and regard to character. It is, therefore, certainly better, if it can be done without any material injury to property, to allow him the liberty of eating a little

of such things, in order to keep him a conscientious honourable man. Legislators sometimes attend but too little to moral niceties of this nature; and yet it is possible thereby to corrupt a whole people, and rob them of their honesty.

Moses, on the other hand, would give no sanction to the practice of free pasturage, although he gave his laws to a people sprung from wandering herdsmen, to whose cattle, the whole country where they lived, was a common; and herein he is a most perfect Antipode to our laws of indiscriminate pasturage, which prove so great a misfortune to Germany. Whoever drove his cattle into another's field or vineyard, and fed therein, was obliged to pay a *grazing rent* *; but whether for the whole year, or only for the precise time of occupation, I am uncertain, Exod. xxii. However favourable, therefore, he may have been to the poor in authorizing them to pluck a few ears of corn, or to glean what was left in the fields, he by no means thought it just that, by any law of free pasturage, a man should be obstructed in using his field as his own property solely, and in turning it to the best account,

A a 2

* *Weidegeld*, Germ. So I render the Hebrew word מִיטָב. Others have translated it *good*, or *the best*. I will point out the reason of my explanation as well as I can here do it. According to the analogy of the two languages, מִיטָב must be the Arabic *Vatab*, which means to graze, or pasture; and thence *Mautab* is a common, or place daily pastured. The word מִיטָב also occurs in Gen. xlvii. 6. applied to the land of Goshen, which certainly could not be called the most fertile field of Egypt, but was merely the *grazing country*.—See Art. XXI.

even after harvest. Whoever has heard the complaints of œconomists against commons, which with us, without injustice to individuals, it is so difficult to abolish, while yet they so effectually obstruct the full improvement of the fields, will perceive the importance and the wisdom of this law, the enforcing of which was attended with no difficulty after the conquest of a new country.

ART. CLXII.

Of Things given to another in trust.

§ 3. WE now proceed to notice the conduct to be pursued with regard to the property of others, either entrusted to our care (*depositum*), or accidentally found by us. In both cases, it is manifest that we have no right to retain it, but ought to restore it to the owner on demand: And this Moses presupposes as a well-known obligation; or if he confirms it in express terms, it will not be material to any one, that I collect any other passages to this effect, than those wherein he gives those special ordinances which we may call strictly his own, in exemplification of the general law on the subject.

In the *first* place then, with regard to property deposited in trust, of which Moses, in Exod. xxii. 6, 8, 9. expressly mentions the following instances, viz. *money, household stuff, apparel, oxen, asses, sheep, and other cattle*, we find in his law the following positive injunctions.

1. In the case of a deposit being denied, it presup-

poses as established and customary, a reference to an oath, to be taken by the person charged with the denial. This, however, is only mentioned by Moses, *en passant*, when prescribing the offering to be made by a person conscious of perjury: and of that admirable contrivance of legislative wisdom, for keeping the conscience of the perjured on the rack, and thus leading him to repentance, we shall speak more fully under the head of Criminal Law.—Lev. v. 21. in the Hebrew; vi. 2,—7. Eng. vers.

2. When a person denied a deposit of any kind, whether of live or dead stock, or pretended that it had been stolen from him, a judicial inquiry took place; and if it was found that he had really received the property, and only falsely denied, or gave it out as stolen, the case then became to a certain extent criminal, and the crime was put on a par with a theft of the lowest sort. He was ordained to pay double to the owner, Exod. xxii. 9.

3. If the deposit was of dead stock, as money or apparel, and the person entrusted with it affirmed it had been stolen from him, though the thief could not be found out, the owner was empowered to bring him to his oath that he had it not in his possession; and if he swore, he made no restitution, Exod. xxii. 6,—8. The law, indeed, does not expressly mention the oath, but only says, *He shall come before the gods* (or judges)
* *whether he has not laid hold of his neighbour's pro-*

A a 3

* In my German version I have here inserted the words, *und die sollen untersuchen*, that is, *and they shall enquire*, without which it would

perty ; but the phrase *אִם כִּי*, *whether not*, is elsewhere so notoriously the usual formula of an oath among the Hebrews, that we can scarcely understand it otherwise than in reference to an oath ; more especially as the oath is expressly mentioned in ver. 10. ; and in most cases, no other proof of his not having retained his neighbour's property, could possibly be had, but an oath.—The thief, when discovered, was obliged to make twofold restitution : but it is uncertain, whether to the owner, or to the depositary ; and whether, therefore, the penalty imposed on the thief went to the master of the goods, or to the person whom the theft had exposed to the danger of an accusation, *Exod. xxii. 6.*

4. If the deposit consisted of a beast, which came by any misfortune, or was driven away from the pasture, the depositary, if no man had seen it, was obliged to swear that he had not retained it, or applied it to his own use : and his oath to this effect, the owner was bound to accept, instead of payment, *Exod. xxii. 9, 10.* But if, on the other hand, it had been stolen out of the house of the depositary, he was obliged to pay it ; on the principle, it would seem, of its being more difficult to steal a beast out of a house, than any thing else ; and that as he might have had the *profit* arising from the use of it, so he ought to bear the *loss* arising from his negligence in looking after it, or from (what is of more rare occurrence, and often of difficult distinction from negligence, from) accident.—If, again,

not have been intelligible. I did not chuse directly to say, *and he shall swear* ; but rather to employ a general expression which would imply the exaction of an oath.

the beast was torn in pieces, (which might easily happen even in a house, if a wolf, or other ravenous animal, broke in) the depositary was only bound to bring proof of the fact, and, doing so, he was under no obligation to pay it. What proof was requisite, Moses does not say. The most natural proof is, the testimony of an eye-witness, or a remnant of bloody skin, or bone; but on this point, nothing is specified; Exod. xxii. 12 *.

ART. CLXIII.

The Laws respecting Things found.

§ 4. THE property which another has lost, and I have found, I may not retain, nor wish to retain; but I ought to endeavour to find its owner, and to restore it to him. That fundamental principle of the Mosaic law, (Exod. xx. 17.) *that we should not covet what is another's*, inculcates this doctrine so forcibly, and to such an extent, as that it would even disapprove my secretly *wishing*, that after all the trouble I could take, the owner might remain undiscovered.

In the case of any thing lost, a reference was like-

A a 4

* I have here used the general term, *Proof*. Most other translators have said, *he shall bring a witness*. The word עֵד no doubt signifies *a witness*; but it is used likewise to denote any kind of evidence; and a general term is more suitable here, because a wild beast that has a mind to tear a sheep or a goat in pieces, is not apt to wait the coming of an eye-witness, nor would they be often torn, if any one were nigh.

wise allowed to be made to the oath of the person supposed to have found it; but how strong the probability necessarily was, on which the owner must found his charge, in order to oblige his neighbour to swear, cannot be ascertained, because mention is made of the oath but incidentally, although, indeed, it is a second time repeated, where the offering for perjury is ordained, Lev. v. 21.; (Eng. Bib. vi. 3.)

The person who found any thing lost, whether a beast that had strayed, or an article of clothing, or whatever else, living or lifeless, was not at liberty to remain unconcerned about it, but was bound to take charge of it; and, if a beast, to maintain it at the owner's expense, until he could have it taken away, Deut. xxii. 1,—3.

Whoever saw a beast tottering or lying under the weight of his burden, was bound to help him; and that with the same exertion and perseverance as the owner himself was doing, or would have done. Nor durst he (for this the words of Moses seem to imply), desist, but *with* the owner; that is, until the owner himself left the beast, seeing him past relief, Exod. xxiii. 5. Deut. xxii. 4.

Both these were incumbent duties even when the beast belonged to an enemy: and the passages above referred to, expressly mention the ox and ass of an enemy. This is reasonable; for we expect that even our enemy will be humane enough to forget his enmity, and give us his aid in a time of need, or, at any rate, that he will not be so *little* as to extend his enmity to a beast quite innocent of our quarrel, and that lies in distress before his eyes. What we expect, we should

do in our turn ; and if we will not listen to the suggestions of moral obligation, still we must see, that among a nation of husbandmen and herdsmen, it was a matter of great importance to preserve the lives of work-beasts. And upon the same principle, we might perhaps be enjoined to extinguish, if need were, a fire in our enemy's house, as if it were our own.

How humane soever this law of Moses may appear, we must at the same time recollect, that it was not given to a people like ourselves, but to a people among whom every individual generally had cattle ; so that they could not but be influenced by the great duty of reciprocity, which among us, at least in towns, does not here hold, because but few have cattle.—Among the Israelites, none almost could be so unaccustomed to their management, or to their relief in distress, as our town's people are. This last circumstance is peculiarly deserving of notice. I grant that such a law would, in Germany, be a very strange one, if accompanied with no limitation to certain classes of the community ; for he who is not from his infancy conversant with beasts, seldom acquires the confidence or dexterity requisite for their aid when in danger, without hurting himself. He, perhaps, sits perfectly well on horseback, and can do all that belongs to a good rider, when mounted ; but to help up with a horse fallen down under his load, or to stop one that has run off, would not be his *forte*.—Add to this, that among us, neither the ox, nor the ass, but the horse alone, is so honourable, that a gentleman could help up with him, without demeaning himself, and being

laughed at. But among a nation of farmers, who ploughed with oxen and asses, and where there were no hereditary noblesse, such a foolish idea, which a legislator must have attended to, could have no place.

CHAPTER XIII.

OF OBLIGATIONS AND LAWS RESPECTING ANIMALS.

ART. CLXIV.

Kindness and Compassion towards Animals in general.

§ 1. WE shall find that Moses, throughout his laws, manifests even towards animals a spirit of justice and kindness, and inculcates the avoidance not only of actual cruelty, but even of its appearance. A code of civil law does not, indeed, necessarily provide for the rights of animals, because they are not citizens; but still, the way in which animals are treated, so strongly influences the manners and sentiments of a people even towards their fellow-creatures (for he who habitually acts with cruelty and want of feeling to beasts, will soon become cruel and hard-hearted to men), that a legislator will sometimes find it necessary to attend to it, to prevent his people from becoming savage. I mean not here to appeal to the ancient Grecian legislators, because they were often too speculative, and the states or cities to which they gave laws, were too inconsiderable to allow us to rely on their experience; but I will illustrate the point by one single example, which is more likely to be felt, and which, besides, has actually had an influence on the manners and laws of great nations in later times.

Now that people no longer slaughter their own cattle, and we have a particular fraternity of butchers, persons of that profession must, of course, be in the daily habit of killing animals, by which they have not been injured; and that in a more tedious and cruel manner than a huntsman, who shoots his game dead in a moment. In this there is nothing unlawful; only what every householder and his servant must otherwise have done now and then, they do so often, as necessarily to become hardened and destitute of compassion, at the sight of blood. The influence of this upon their dispositions, is remarked by all the world, by whom they never get credit for so much tender-heartedness and mercy towards human blood, as other people. In fact, we hear more frequently of cruelties and murders committed by butchers, than by other rich and substantial citizens.—I would fain here describe my own feelings at a sight altogether new to me, and ask, whether many of my readers, unused to such a sight, do not sympathize with me. In travelling through a certain part of Germany, I was struck with astonishment at observing that the landlords of the inns were regularly butchers, and their houses distinguishable by the resort of butchers' dogs. This appeared to me at first sight rather indelicate: but when I heard that both trades were there wont to be purposely conjoined, because a butcher could entertain his guests at less expense than any other man; and that, for this very reason, an eminent innkeeper was, in the provincial idiom, called (*Der Schlund*) *The Gorge*, the thought occurred to me, "Is this quite safe for strangers? Is it not likely that

“ in a tract of some extent, and distinguished by a
 “ singularity so suspicious, if the police be not very
 “ perfect, murders should be more frequent than else-
 “ where?” It is true I did not learn by experience
 that such things actually took place in the inns, and
 I staid for too short a time to enquire; but I could
 could not help reflecting with satisfaction on my na-
 tive country, and Lower Saxony, and Holland, and
 England, where inns are not usually kept in the
 shambles.—I merely state how the thing appeared to
 myself; and, probably, many of my readers, unac-
 customed to such inns, will think and feel as I did.
 In England, the laws have considered the point, and
 excluded butchers from serving as jurymen; not ex-
 pecting from them the necessary degree of tenderness
 and pity towards human suffering. Here, therefore,
 we have an example of a legislative measure, not de-
 vised by a philosopher framing laws for a petty state
 or city in Greece, but by a great nation attending to
 the influence which such people’s procedure towards
 animals (though innocent, because necessary), seldom
 fails to have in blunting the feelings of humanity.

Of most of the Mosaic statutes relating to this sub-
 ject, I mean, if I have not already done so, to treat
 separately, because they had in view other objects
 than that of mere compassion towards animals; al-
 though, perhaps, these objects were clothed in the
 garb of compassion, for the more certain attainment
 of both ends at once, and of that especially which re-
 lated to the good of the country. In the mean time,
 it may not be unacceptable to the reader here to sur-
 vey them at a glance.

It was, then, enjoined by Moses, that when a man saw even his enemy's beast lying under the weight of his burden, he must help up with him, (Exod. xxiii. 5. ; see Art. CLXIII.) ; that the ox must not be muzzled while treading out the corn, (Deut. xxv. 4. ; see Art. CXXX.) ; that on no account must any beast be castrated*, (Lev. xxii. 24. ; see Art. CLXVIII.) ; that a cow, ewe, or goat, must not be killed on the same day with her young, (Lev. xxii. 28.) ; that a kid was not to be dressed with its mother's milk, that is, with butter made of milk, but with oil, (Exod. xxiii. 19†.) ; that when a man found a bird's nest without the limits of his own land, he was not to take the dam with the young, but allow *her* to escape, (Deut. xxii. 6, 7‡.) ; that their cattle were, as well as themselves, to enjoy the rest of the sabbath, (Exod. xx. 10.) ; and that even the game was to have a jubilee on the sabbatical year, and be allowed to feed in the fallow fields unmolested. (Lev. xxv. 7.)

But here, methinks, I shall still be asked by many readers, Does not the Mosaic law establish what is directly contrary to the rational spirit and practice of the English law, as just now exhibited for our approbation ? Does it not make judges of those who were daily butchers ? The high priest was the supreme authority in matters of the law, and the Levites, for the most part, appointed to exercise judicial func-

* See my Dissertation on the *Oriental Mode of Sheep-breeding*, § 12.

† See my *Commentatio de legibus a Mose eo fine latis, ut Israelitis Egypti cupidis Palestinam caram faceret*, § 10.

‡ A Dissertation on this Law will be found in my *Syntagma Commentationum*, Part II. No. 4.

tions ; yet it was the duty of the priest to kill the sacrifice, and the Levite was his assistant ; and whether the person who decides the fate of criminals, be a sacrifice-killer, or a common butcher, makes very little difference ; since both, by their habitually dealing in blood and slaughter, must become alike hardened to the feelings of human suffering.

In answer to this objection, I might, with great truth, offer a variety of remarks ; as, in the *first* place, that a great distinction is to be made between the ordinary judges and the supreme judge, to whom only the most difficult questions are carried by way of appeal, or where his opinion is desired ; and even supposing the latter (in the present instance, the high-priest) not possessed of extreme humanity, still it is to be regarded as matter of the less regret, because the cause does not come before him, until after deliberate investigation of the facts, nor is he likely to decide under the influence of any passion. He may not so much as have ever seen the accused. Among us, a capital sentence, before being carried into execution, must be subscribed by the sovereign ; and thus may, perhaps, come ultimately under the signature of a hero accustomed to the sight of a field of battle, where dead bodies lie by thousands ; yet we never complain of this as a grievance ; because he is not the investigator of the fact, or, as an Englishman would term it, *the jury* ; nor is he even the author of the original sentence, but only the final decider, who has it in his power to pardon, after others have condemned.—I might remark, *secondly*, that Moses gave no express command for selecting the judges from

among the Levites; although he may have presupposed it would so happen afterwards, from the circumstance of that tribe being obliged to devote their attention to learning; and, *lastly*, that as among many nations, the judicial and sacerdotal offices have been found united, Moses may, in this point, merely have adhered to ancient usages.—But omitting all this, I shall only remind the objectors, that in the days of Moses, the priests and Levites had not so much to do with killing the sacrifices as in later times, when the manners of the people became altered. The Israelite who brought an offering, had to kill it himself, and the priest merely performed the sacred ceremonies with it at the altar. So at least did the law in Lev. i. and iii. enjoin; and with great judgment and propriety, because given to a nation of husbandmen and herdsmen, where every one must have understood how to go about the slaughter of a beast. The priest, therefore, had only the particular duty of killing the public sacrifices for the whole people every morning and evening; and these were not so numerous as that the bloody business could, by the frequency of its recurrence to each individual, serve to render him one whit less tender-hearted than any other Israelite. In process of time, however, changes in this matter took place: We find from 2 Chron. xxxv. 11. that many centuries afterwards, the offerer no longer killed his offering himself; probably because many of the Israelites knew not how to do so; so that at this time the judicial functions might, no doubt, be said to have fallen into the hands of butchers, had not the Levites appointed as judges in the different cities, obtained, in

consequence, a dispensation from the service of the altar ; because a judge must always be regular in his attendance at the place where he is appointed to administer justice. In this work, strictly speaking, I have nothing to do with those later times, but only with the original Mosaic law ; nor am I, for want of historical accounts, in a situation to ascertain, whether, and in what manner, they obviated an inconvenience that resulted from the change of their manners in the course of ages, and from the ancient sacrificial usages being forgotten among the bulk of the people.

ART. CLXV.

Distinction of Animals in a legislative point of view.

§ 2. CONSIDERED in the light in which a legislator would regard them, animals are either,

1. *Domestic*, that is, the property of particular persons ; or,

2. *Wild*, or such as, properly speaking, belong to nobody ; and these last are divisible into four sorts ; such as are,

(1.) *Edible*, or, as Moses calls them, *clean* ; such as the stag, the roe, the jachmur, &c.

(2.) *Not edible*, but still not apt to attack man, for which reason I would term them *innocuous*. And here the birds of prey may be classed, because, though they live by preying on other animals, especially defenceless birds, they do not usually attack human creatures, or hurt them. To us, perhaps, they are more odious than to the Israelites, because with us

not only country people, but even the opulent and middling class in towns keep poultry; so that the hawk is universally regarded as a robber. But the Israelites gave themselves no trouble with the breeding of poultry; for in the history of the patriarchs, where so much is said on rural œconomy, and especially on the subject of cattle, not a word do we find concerning poultry, not even in the laws relating to offerings. Nay, great as is the number of other animals mentioned in it, the Hebrew Bible does not so much as furnish a name for them, unless, perhaps, in a book written about the commencement of the Babylonish captivity, and even there, through the mistake of transcribers, it is rendered almost undiscoverable*. And hence, as the Israelites can scarcely have kept poultry†, we need not wonder that birds

* דגג (*Dagag*). I entertain a suspicion, of which, however, I cannot here enter fully into the grounds, that in Jerem. xvii. 11. instead of דגדג we should read דגג, and translate, *The hen hatches and clucks with the chickens of eggs not her own*. Sometimes the hen steals the eggs of a bird of a different species, hatches them, and clucks with the chickens as if they were her own; but if they are not of the gallinaceous kind, but ducks, or such like, they soon forsake their supposititious mother. To a hen of this thievish cast, the miser who accumulates wealth by unjust means, may be compared. His riches take wings and flee away.—This explanation, however, is not incontrovertible; and if here the prophet had not our domestic poultry in his view, in no passage of the Old Testament is mention made of them, nor do we find them among the Jews, until after their subjection by the Romans.

† It may in like manner be doubted, whether breeding of pigeons was much practised among them; for those kept in dove-cots, are in the later Hebrew, called by a name equivalent to *Herodian doves*, because Herod is said to have introduced them.—See Buxtorf's *Chald-*

of prey, which in other respects are extremely useful, especially in a warm climate, are not mentioned in the Mosaic laws in terms so obnoxious, as in ours, where rewards are offered for their destruction.

(3.) *Ravenous*, (or such as are wont to attack man) including serpents. In favour of the two former classes of wild animals, the Mosaic laws make certain provisions; but for the care and preservation of these, to which I would apply the term *misanthropes*, no command is given.

(4.) *Fishes*. That Moses should take no notice of *them*, is not to be wondered at. In the Arabian deserts, where he gave his law, there were no fish; nor did the waters of Palestine produce them in such remarkable abundance as to make it necessary for him to make laws for their preservation. He might leave this to the future local policy of those tribes whose habitations might be fixed on the shores of the lake of Gennezareth, in which it would appear that they were plentiful.

B b 2

Rabbinic. Lexicon, p. 630. Pigeons, it is true, appear frequently among their offerings; but then they might be of the wild kind, as well as turtle-doves. Here, however, I speak dubiously: for even in the patriarchal history, we find pigeons used as offerings; and Egypt, out of which the Israelites came, is at this day full of pigeon-houses. But as these are by no means favourable to agricultural œconomy, I here merely throw out two questions that occur to me. Did the Israelites breed pigeons? and, was the practice general? If not, they had the less reason to dread the depredations of the hawk.

ART. CLXVI.

Of Domestic Animals, particularly the Ox, Ass, and Horse.

§ 3. Of domestic animals, the rural œconomy of the Israelites led them to consider the ox as by far the most important; and this we perceive to have an influence on the laws of Moses, and even on their very style, where they relate to animals. On such occasions, he sometimes names but one single animal; his command concerning which, is to be understood as extending to all of the same general class of *clean* or *unclean* beasts, to which it may belong. Of the former class, it is commonly the ox, and of the latter, the ass, which he specifies as the representative; and where both classes are mentioned, both. See Exod. xxi. 33. xxiii. 4, 5, 12. xxxiv. 20. Dent. xxii. 4. In the decalogue, the ox and the ass are twice mentioned in this way, Exod. xx. 14. Deut. v. 14, 21. We find in Exod. xxii. 4, 9, 10. where examples of theft, &c. are given from beasts, the sheep mentioned along with the ox and ass.

The preference thus given to the ox, both by the Israelites and their legislator, proceeded partly from his importance in their œconomy; partly from the high antiquity of the laws, which by this internal mark we at once plainly perceive; and partly from the long residence of the Israelites in Egypt.

Among a people practising agriculture, or rather among a nation of husbandmen like the Israelites, the

ox, of all animals serving for food, was in an economical point of view justly entitled to hold a very high pre-eminence, from the consideration of his great use in all the operations of farming, and particularly in ploughing and threshing, or rather, treading out the corn *. In those days, ploughing with horses, was never thought of. It was performed either with oxen or asses ; but of the latter, a Jew durst not eat, nor even taste their milk ; nor is this, indeed, usual among ourselves. Economists are of opinion, that it would be greatly to the improvement of our agricultural system were we to plough only with oxen, which, while they afford us flesh and milk, are neither so expensive in price nor maintenance as horses ; in addition to which, it may be remarked, that by being yoked in the plough, a horse soon loses the only qualification for which he is so highly prized—the rapidity and ease of his motion. But, setting aside all these economical considerations, which are at present so zealously insisted on, particularly in England ; the agricultural heresy of ploughing with horses, had not arisen at this early period. And the farther we go back into ancient times, the more proofs do we find that mankind repaid the labours of the ox in agriculture, with a strong degree of affection and gratitude. He was regarded as man's assistant ; and from the representations given of the golden age of the world, we see, that to think of shedding the blood, or tasting the flesh of the animal, to whose toil man owed his

E b 3

* See *Paulsen's Accounts of Oriental Agriculture*, § 40, 41, 42

daily bread, would then have been deemed a heinous crime.

*Ante etiam Sceptrum Dictæi Regis et ante,
Impia quam cæsis gens est epulata Juvencis,*

is the language of Virgil (Georg. ii. 536.), familiar to us from boyhood ; and we find that the Hebrews had a very similar mythology. The prophet Isaiah*, in the picture he draws of the return of the golden age, gives this law as one trait, *He that killeth an ox, is as one who hath slain a man*, that is, will be regarded as a murderer.

We may easily conceive, that at the first introduction of that species of tillage which was not, like the operations of horticulture, performed with the hand, but much more easily and expeditiously, with the plough, a very great scarcity of cattle must have taken place ; because *before*, they had not been reared in such numbers as would then be found necessary for agriculture : and that hence the people of those early days, would pay very great attention to their multiplication—would abstain altogether from eating them—and would annex a severe punishment to the crime of killing them. The more ancient nations are, the more nearly do they approach to this period ; and in an age when gratitude to animals had not, through the refinements of sentiment, become obsolete, the stronger and more real must have been their feelings of regard and

* Chap. lxvi. 1,—3. More remarks on this passage will be found in my Latin notes and additions (*Epimetra*) to Bishop Lowth's *Prælectiones de sacra Poesi Hebræorum*.—Præl. ix. Oxf. 1763. Gottin. 1768-9. 2d edition.

gratitude to this useful creature. In our times, these feelings are only alive to horses and hounds; for it is with these, and not with oxen, that our great ones form acquaintance. Concerning the high esteem in which the ox was anciently held, others have written much more fully and learnedly; but for my present purpose, little detail is necessary.

If there ever was any country in which our accounts of the golden age were in any measure realized, and not perfectly fabulous, it must have been in Egypt, which peculiarly merits the appellation of the seat of agriculture; for that the Egyptians considered the killing of many animals, which, from their utility to the country, they held sacred, as a capital crime, and punished it with more severity than murder; that they held cattle, from their importance in agriculture, in the highest estimation; and that the cow, from various religious considerations connected with the doctrine of the *Metempsychosis*, was, in their eyes, an object of peculiar sanctity; are facts sufficiently established.

I remember to have read somewhere in the later accounts of the *Mission of Tranquebar*, that in India, where eating the flesh of oxen is accounted sinful, cattle multiply far less than with us; and one of the Danish missionaries, in an argument with a heathen, hence readily admitted, that in India, for the public good, the people ought to abstain from eating them. I cannot now light upon the passage; but the fact merits investigation, for should it prove correct, it would warrant the inference, that considerations con-

nected with the climate might have influenced the Egyptians in sparing the lives of this tribe of animals.

In the law which prohibits muzzling the ox while he treads out the corn, as illustrated above in Art. CXXX. we have a relique of the veneration paid by ancient nations to the animal by whose aid their agricultural labours were at once so materially lightened and extended. And in their inflicting a severer punishment on the crime of stealing an ox, than on any other species of theft, (see Exod. xxi. 37. *Hebr.* xxii. 1. *Eng.*) we perceive the sense they entertained of his æconomical importance, and that, in their judgment, without him the agricultural improvement of a country must be for ever at a stand. To the same principle of regard, or, if we may so call it, of gratitude towards oxen, we may probably ascribe the Mosaic prohibition in Deut. xxii. 10. of yoking the ox and ass in the plough together. In this law, certain expositors, it is true, seek for something figurative, such as a dehoration from intercourse with heathens, or (what certainly is here but very obscurely implied, and, as we have shewn in Art. C. was in fact *not* forbidden) a prohibition of intermarriage with foreigners. But I would rather say, that herein Moses was regulated by the ideas of those early ages; at the same time, however, that he does, by an example taken from the treatment due and shewn to the ox, inculcate the duty of not treating contemptuously or cruelly the servant whose labour prepares or earns us our daily bread; and that as he avails himself of the esteem in which the Israelites held this animal, to habituate them to sentiments of gratitude towards him;

so, in the present instance, we ought to consider the conclusion, *a minore ad majus*, as warranted and intended ; as I have already remarked towards the conclusion of Art. CXXX.

Concerning the horse, which in our œconomy, and from the nature of our *military Tactics*, is become an animal of supreme importance, and to the protection of which, of course, our later laws are so directed, as to denounce the severest punishment against horse-stealing, we find in the Mosaic law not a syllable, except the injunction laid on the future king of Israel, not to keep a strong body of cavalry, nor an immoderate number of horses. This injunction occurs in Deut. xvii. 16. and has already been illustrated under Art. LIV. Had the tenth commandment been originally given to Germans, instead of, *Thou shalt not covet thy neighbour's ox, or his ass*, it would have said, *his horse, or his ox*. But in the time of Moses, and down to the reign of Solomon, the horse was not in use among the Israelites, who for the purpose of labour and carriage employed the ass, the mule, the camel, and above all, the ox, particularly that species called the buffalo, which is common in Asia, and goes faster than the other kinds. I mean to write a Dissertation on the Earliest History of Horse Breeding, in one of the subsequent parts of my *Miscellaneous writings* : and shall here, therefore, merely give the outline of its contents, reserving the proofs and details for that work. [Note.—This dissertation is now in this second edition of the *Mosaic Law*, given as an appendix to the present article ; and will be found at the end of this volume.]

The riches of the patriarchs Abraham, Isaac, and Jacob, consisted of their herds of sheep, goats, cattle, asses, and camels. Horses they had none: for these, as well as travelling carriages, which in ancient times, were elsewhere very rare, they met with first in Egypt. In the time of Moses, the Egyptian monarch had studs of horses, and a very large body of cavalry, which, while it must have essentially contributed to the defence of so flat a country, and to the maintenance of its internal tranquillity, would also be highly serviceable for the purpose of foreign conquests.—Job, among his herds, had in like manner, no horses, or to speak more properly, no breeding studs. We find, it is true, in the book of Job, a description of the horse, extremely picturesque and magnificent: but then it is of the war-horse only.—After their departure from Egypt, the Israelites, as well as the Arabs, on whose confines they touched, were still as much strangers to horse-breeding as the patriarchs. They yoked oxen to the waggon on which the tabernacle, when taken to pieces, and the other sacred things, were carried; and in their war with the Midianites they made booty of sheep, oxen, camels, and asses, but not of horses. In the time of the judges, we find horses and war-chariots among the Canaanites, but still the Israelites had none: and hence they were generally too timid to venture down into the plains, confining their conquests to the mountainous parts of the country.—In the reign of Saul it would appear, that horse-breeding had not yet been introduced into Arabia; for in a war with some of the Arabian nations, the Israelites got plunder in camels, sheep, and asses, but still

no horses.—David's enemies brought a strong force in cavalry into the field against him : and in the book of Psalms the horse commonly appears only on the side of the enemies of the people of God : and so entirely unaccustomed to the management of this animal had the Israelites still continued, that, after a battle, in which they took a considerable body of cavalry prisoners, (2 Sam. viii. 4.) David caused most of the horses to be cut down, because he did not know what use to make of them.—Solomon was the first who established a cavalry force : and, compared to what is usual now, it was a very inconsiderable one. He also carried on a trade in Egyptian horses for the benefit of the crown. (See Art. LIX. 9.) At this period Egypt was still the native country of the best horses : none were yet bred in Arabia, else would not the Phœnician kings have purchased Egyptian horses at second hand from Solomon at his own price, but have rather got them directly from Arabia themselves. It is remarkable too, that one horse cost him the same price as another, namely, 150 shekels (1 Kings x. 29.) which shows that the qualities of horses were not yet noticed with the eyes of amateurs.—Even at the time when Jerusalem was conquered and first destroyed by Nebuchadnezzar, Arabia seems not to have bred horses : for the Tyrians brought theirs from Armenia. Arabia, therefore, could hardly have been, as Buffon supposes, the original, and natural climate of horses : but must have had its breed only at a late period from other countries : and if, in after ages, the Arabian horses became the best in the world, it very probably proceeded from the same cause which has produced

the singular excellence of the English horses, the natural fondness for horse-racing*. Wherever this becomes a favourite amusement, with prizes established, and the practice of betting encouraged, every one will lay himself out to procure the best horses: and racing is a very frequent exercise among the Arabs.—Thus much by way of abstract of my intended dissertation.

Under these circumstances it is not wonderful that the Mosaic law should take no notice of an animal, which *we* hold in such high estimation. To Moses, educated as he was in Egypt, and, with his people, at last, chased out of it by Pharaoh's cavalry, the use of the horse, either for war or travelling could certainly not be unknown: else could he not have been the author of that highly beautiful and poetical description of this animal, which we find in the xxxixth chap-

* Such at least is the opinion of connoisseurs: and so far has the preference to English horses been carried, that the king of Prussia imports cavalry horses at great expence from England. The immense sums that may there be gained by a good horse on the turf induces the English to spare no expence on the importation of the best stallions from Arabia: and it is by uniting the swiftness of the Arabian with the size of the English horse, that this breed of racers has attained its unrivalled excellence.—Among all the novelties introduced into Denmark by *Count Struensee* horse-racing was, perhaps, one of the most useful: only that it was too expensive, and in some other respects prejudicial to the nation. Had he established the diversion, not at Copenhagen, but in the vicinity of Hamburg, and had the opulent citizens acquired a taste for it, with the spirit of betting as in England, the Danish breed of horses would soon have been materially improved, and that at the expence of their neighbours.

ter of the book of Job, ver. 19,—25*. But as it was his object to establish a nation of husbandmen, and not of soldiers for the conquest of foreign lands; and as Palestine, from its situation, required not the defence of cavalry (see Art. LIV. 5.) he might very well decline introducing among his people the yet unusual art of horse-breeding. A great deal of land that might be applied to the production of human food is requisite for the maintenance of horses in every country: and in England, this is a subject of perpetual complaint, the high price of corn being ascribed to the immense number of superfluous horses. But in those days riding was less frequent, and travelling in carriages almost unknown, the roads not being adapted to it†: so that journies were generally

* May I here remind my readers, that I consider the book of Job as a moral poem, and suppose Moses its author? Who ever wishes to have more information on this point, may consult my *Prolegomena in Jobum, edita in usum Auditorum*.

† Where people are to travel in carriages, that they may not be overset, the roads must be properly formed and conducted: and it is in a level country like Egypt, that such roads are first to be expected. Accordingly we find, that there, as early as Joseph's time, travelling in carriages was in use, Gen. xli. 43. xlv. 19. xlv. 5. But in a mountainous country it is impossible to travel in this manner, while the roads (so to speak) continue in a state of nature, too narrow in one place, too steep in another; nor until, by the persevering labours of several generations, after the invention of wheel-carriages, public roads are skilfully conducted in every direction through it. Of that invention the merchants of Palestine and Arabia were not likely to have been the authors, because for the carriage of their commodities they had the command of that tractable and unexpensive animal, the camel. In the convenience of our carriages of all

performed on foot : and when riding was necessary, the camel was always at hand ; and in the sterile regions of Arabia, this contented creature, which requires but very little provender, and may be brought to drink but once in four days, is infinitely preferable to a horse. To be sure this was not such an elegant mode of travelling : but those who wished to proceed more at their ease, made use of the ass, which, in a mountainous country, is much surer-footed than a horse ; and in southern climates is so much more nimble and spirited than in northern, that, according to *Millet*, in his description of Egypt (letter ix.) a horse in that country must gallop to keep pace with him at a trot. But independent of all this, there was yet another circumstance stated by Moses himself, in Deut. xvii. 16. which might restrain him from introducing among his people the needless practice of horse-breeding. Egypt was then renowned for the best horses, and continued so for many centuries afterwards : and to Egypt, the Israelites frequently manifested a strong propensity to return : so that, to encourage and keep alive their predilection for that country, by the introduction of horses, and thus render Palestine, in which it had not hitherto been attempted, less agreeable and dear to them, would not have been expedient : for it is a common opinion, how unfounded soever it may be, that whether the breed of horses be good or bad

kinds we enjoy a great advantage over the ancient world ; but we must not imagine that this could possibly have been always the case. In the progress of every nation, there is a time when carriages are introduced : in some countries that period is not yet arrived, and of course, travellers must either ride or walk.

depends entirely on the country in which they are produced. See my *Commentatio de Legibus Mosaicis Palestinam Israelitis charam facturis*.

ART. CLXVII.

Of the Sabbath, as intended for Beasts.

§ 4. IT was a part of the good treatment due to domestic animals, they were to be allowed to share the enjoyment of the sabbatical rest. On the people's own account this was no doubt necessary ; because in general beasts can perform no work without man's assistance : but still Moses expressly declares that his commandment respecting the sabbath had a direct reference to the rest and refreshment of beasts as well as of man. His words are, *On the seventh day thou shalt rest from labour ; that thine ox and thine ass may also rest, and thy servant and stranger may be refreshed*, Exod. xxiii. 12. xx. 10. Deut. v. 14.

In fact, some such alternation of labour and rest seems necessary to the preservation of beasts : for those that perform the same kind of work day after day, without any interruption, soon become stupid and useless. At least, we see this the case with horses : and the reader will not take it amiss, that a town-bred writer, having better access to observe the effects of labour on them, than on oxen, should prefer taking an example from the former. A horse that has to travel three German miles every day will not hold out long : but, with intervening days of rest, in the same time, he will be able to go over a much

greater space without injury. He will, for example, in 10 days travel 35 German miles, with three resting days, that is, at the rate of five miles each day of the other seven. This fact is so well known, that in riding schools, one or two days of rest, besides Sunday, are usually allowed to the horses, in order to preserve their spirit and activity; whereas the post-horses, which are constantly at work, soon become stiff and unserviceable. The case is probably the same with other beasts of burden, although they do not require so many intervals of rest as horses. And hence the good treatment of beasts enjoined in the Mosaic law, and the sabbatical rest ordained for their refreshment, was highly expedient, even in an œconomical point of view, and wisely suited to the circumstances of a people, whose cattle formed the principal part of their subsistence.

ART. CLXVIII.

The Castration of Animals forbidden.

§ 5. IN the xxii. chapter of Leviticus, ver. 24. Moses prohibits all castration of animals. Of this passage, because the meaning of the words has been contested, I will here give a literal version, that every one may judge for himself. *A beast that is crushed, bruised, evulsed, or excised, (these were the four modes of castration) you shall not bring unto Jehovah, nor shall you make it so in your land.* The Mosaic prohibition is, therefore, two-fold; in the *first* place, with regard to the offering of castrated animals; and,

secondly, with regard to making them so in the land. Thus was the law understood in the time of Josephus, for he says, that, according to the Mosaic ordinance, the castration of either man or beast was not lawful ;

μη εξηναι ποιειν εκτομιας, μητε ανθρωπους, μητε των αλλων ζωνων. *Antiq.* iv. 8. 40.

To some expositors, this has appeared too incredible to be admitted ; and *Le Clerc* * cannot conceive, how uncastrated cattle could be used in agriculture without danger. The word *make*, therefore, they understand of offerings : nor is it to be denied, that in Hebrew it sometimes has such a meaning. But here I cannot coincide with them in opinion, for the following reasons :

1. If the last clause of the verse be interpreted as prohibiting the offering of castrated animals to the Lord, then Moses only repeats in it what he had just before asserted more explicitly, and is guilty of a tautology. This reason, I grant, is not decisive, because such repetitions (with a slight change of expression) are not unfrequent in oriental writings ; but still this seldom takes place in ancient laws, and especially in those of Moses, which are remarkable for conciseness. Add to this,

2. That there follow the words, *in your land*, which are quite unsuitable, if offerings are intended, because these were to be made not any where throughout the land, but only at the place where God had his

* *Quomodo sine periculo possint Tauris integris uti in Agricultura, aliisque operibus, vix intelligere est.*

sanctuary, or as Luther has expressed it in his version, *Where God had set up the remembrance of his name.* This addition, therefore, forms a manifest *antithesis*, between the whole *land*, and the only place of offering, prohibiting the castration of animals in any part of it whatever; or else it is, as before, superfluous, which it is not likely it was meant to be, in a law so very brief.

3. Although I consider the Jews in the time of Josephus as any thing but infallible expounders of the Mosaic law, and am certain they have very frequently mistaken its meaning; yet by the testimony of Josephus, Le Clerc's difficulty is done away. For we see that in the days of this historian, the Jews actually did what Le Clerc accounted impossible: they did not castrate oxen, and yet ploughed with them.

In fact, this objection could hardly have occurred to an Oriental, but only to an European, who merely knows oxen, as *we*, by strong artificial stall-feeding render them more spirited than they naturally are: and who is withal ignorant of the powerful means which the Orientals use for making their oxen tractable. Le Clerc only saw the bulls of Holland, the very country of cattle-breeding: and supposed that in the east they were equally spirited. He ought also to have enquired, if the cows in the east give only the third part of the milk which they yield in Holland? Late travellers have to this question given a more satisfactory answer than he could have given, but still he might have asked it.

As most of our oxen are castrated, there is in every herd, but one, or if it be large, and amount to hun-

dreds, at most but a few bulls, to serve the whole number. These are stall-fed in the best manner, to increase their mettle : so that, though the practice is certainly not altogether according to nature, one will be sufficient for 50, or perhaps 100 cows. If this were not the case, and the animal unequal to the task, for which alone he is kept, without doing any other work, the owners of the cows would prosecute the person who furnishes him at a certain rate, even though he belonged to the burgomaster and magistrates. That a bull thus pampered up, and never yoked, must become much more spirited and furious, it is easy to conceive : and yet strangers alone will run any risk of injury from him ; for even a little herd-boy, whose lead-loaded club he has been accustomed to feel, will make him obey with wonderful ease. If he is not sufficiently fed, the proprietors of the cows complain of his *nonchalance*, (as I may call it, for the German term it were improper to give), and, in that case, he may allowed to go at large without much danger.—Now, we may suppose, that where the castration of cattle is prohibited, they will not be highly fed up within doors, but merely driven to range the pastures ; where, instead of finding so much food, or at least, such nutritious food as at home, they *make too much travel*, as some æconomists express it : and hence the earnestness wherewith they recommend the stall-feeding of cows, from which a large quantity of milk is expected. When the Hebrew writers, even the poets, wish to describe vicious and dangerous cattle, they call them *bulls of Bashan*, because in that mountainous tract the pasture was peculiarly rich ; but still cattle merely grazed will

never acquire the size and mettle of those that are stalled ; and if they are worked in the plough, their spirit in a great measure vanishes.

The Orientals, besides, make use of a contrivance for curbing their work beasts, which is not adopted among us. They bore the nose through both sides and put a ring (Heb. חך, *chach*) through it, to which they fasten two cords : and when a beast becomes unruly, they have only to draw the cord on one side ; which, by stopping his breath, punishes him so effectually, that after a few repetitions, he fails not to become quite tractable, whenever he begins to feel it. To this contrivance the Arabian poets often allude* ; and the Hebrew writers sometimes mention it†. I have a print engraved at Nuremberg‡, of a buffalo, that was exhibited as a show in different parts of Europe, where this ring is represented : and I am only sorry that I cannot now have it engraved, to explain this point more fully to my readers.

Upon the whole, where people are accustomed to the management of uncastrated animals, it is far from being so dangerous, as we, from our inexperience, are apt to apprehend.

* See p. 56 of my *Arabic Chrestomathy* for an example ; of which a German version, with illustrations, is given in p. 87. of the preface to my Arabic grammar ; which preface is also printed separately, under the title of (*Vorrede vom Arabischen Geschmack*) Specimens of the Arabian Taste in Poetry.

† See Isa. xxxvii. 29. Ezek. xxxix. 4.

‡ I can give no farther account of this print, than that it was the work of the late *Franz*, who saw the animal in September, 1753. It had been brought to Naples in the year 1745.—

But ought not horses to be castrated? Even this is not so necessary as our practice leads us to suppose. To this day it is very rarely done in the East. Niebuhr in p. 81. of his Description of Arabia, says, “ A French officer, who had been for several years on the Coromandel coast, and in Bengal, assured me, that the Europeans there use stallions for cavalry horses, and pretended to have remarked, that it was more difficult to break them in winter than in summer. The Arabs, indeed, ride stallions : but then they are generally *Hüssan*, or such as have never covered ; seldom *Hassari*, or those that have done so. The Arabs of the desert commonly use *Farrasi*, or mares, and sell their stallions in the towns.” That the Turks in Asia are fond of riding stallions, we know from the accounts of other travellers. I have only farther to remark, that Moses in his laws on this subject, had not horses, or at least cavalry, in his view.

Of castration, as it affects animals that are to be eaten, in which point of view it remains yet to be considered, as I have nothing farther to observe, than what I have already said in sect. 12. of my *Treatise concerning the Management of Sheep in the East*, I shall here reprint the passage entire.

“ The law of Levit, xxii. 24. in which the castration of any animal is absolutely prohibited, has, in regard to sheep, less difficulty, than in regard to horses and cattle : but since I have read the *Letter to Mr. Collinson*, I comprehend it still more fully than before. The rams that are not necessary for *tuping*, may be employed to great advantage, for

“producing an increase in the quantity of wool.
 “Whole flocks of them are thus pastured in Spain by
 “themselves; never obtaining access to the ewes.
 “These yield more wool, than wedders or ewes;
 “three of them producing as much as four of the
 “former, or five of the latter. They likewise live
 “longer; only losing their teeth, which unfits them
 “for chewing the grass, in their eighth year; whereas
 “wedders do so in their sixth, and ewes even in their
 “fifth. In Spain the old rams are castrated, and fed
 “for slaughter; but make very bad meat; but as the
 “Israelites durst not thus treat them, and an old ram
 “could be but most loathsome food, there can be no
 “doubt, that, when they could no longer eat, they
 “were dispatched, as among us. From the Greek
 “text of Deut. xiv. 4. it appears, that the Seventy
 “interpreters, according to the custom of those times,
 “had no idea, that sheep or goats grown old, could
 “be used for food: for their version of the words of
 “Moses is to this effect, ‘The following beasts ye
 “may eat: the calf of the cow, the lamb of the sheep,
 “and the kid of the goat.’ (Μοσχον εκ βοων, και αρνον
 “εκ προβατων, και χιμαρον εξ αιγων.)—I see also from
 “Russel’s Natural History of Aleppo, p. 50. that there
 “the Jews and Turks never taste the flesh of cattle:
 “which makes me still less to doubt, that, among
 “people who durst not castrate a ram, he would,
 “when from losing his teeth, he could eat no more,
 “be stabbed dead, and use be made only of his skin.”

To this quotation, I have only to add, that the
 young calf would have been early slaughtered, if it
 had not been necessary to spare him for agricultural

purposes; and that the old bull worn out in the plough, and past being eaten, must have been dispatched as well as the ram.

ART. CLXIX.

Concerning the Prohibition of killing Beasts, during the abode of the Israelites in the wilderness, unless they at the same time offered them to the Lord; and the use which Moses here made of the laws, to which the Israelites had been accustomed in Egypt.

§ 6. OF the statute containing this prohibition, which stands in Levit. xvii. 1,—7. and in which Moses very happily avails himself in so far of the laws to which the people were already accustomed in Egypt, it is necessary to give a particular illustration. In some respects it may be compared to that law of the very earliest times, noticed under Art. CLXVI. which punished the killing of cattle with death: only, that besides having a different origin and object, it included sheep and goats as well as cattle, and that, instead of absolutely prohibiting, it authorised the slaughter of those animals for food, provided they were brought as offerings to God at the place appointed for that purpose. The words of Moses may be thus rendered, *Whoever among the Israelites killeth an ox, sheep, or goat, either within or without the camp, and bringeth it not before the convention tent, (or as, from Luther's version, we commonly call it, the tabernacle of testimony) to him it shall be accounted blood-guilliness; he hath shed blood, and shall be rooted out from among his*

people ; and this, in order that the Israelites may bring to the door of the convention tent, their offerings which they have hitherto made in the field, and give them unto the priest, to be slain as feast-offerings in honour of Jehovah ; that his priest may sprinkle the blood on the altar of Jehovah, and burn the fat as an offering-perfume in honour of him ; and that no man may any more make offerings to satyrs, running after them with idolatrous lust. And this shall be a perpetual statute unto your posterity.

It has been common to understand Moses as here only meaning, that although they were to make their offerings of those animals only at the tabernacle, yet they might for other purposes kill them wherever they pleased : which is, in fact, to make the law in its import nothing different from that immediately following, (ver. 8, 9.) and affecting strangers as well as Israelites. But this opinion is by far too repugnant to the sense of the terms employed by Moses. The verb שחט (*shachat*) in ver. 3. means *to slaughter* in general, and is not by usage peculiarly limited to sacrifices. Had Moses, instead of it, used the verb זבח, (*zabach*) the explanation might be admitted ; but as the passage stands, it is unsuitable ; nor would such violence have been ever offered to his words, but for the great difficulty which expositors have found, in comprehending wherefore *all* killing of the animals in question, unless before the tabernacle and for sacrifice, should have been prohibited*. Could it (say

* Dr. Lilienthal, in his *Notitia duorum Codicum Biblia Hebr. continentium*, p. 109. suggests a new expedient for obviating this difficulty.

they) have been the intention of Moses to debar the Israelites from the use of those animals for food?

This difficulty is easily removed. Most certainly Moses, by this law taken even in its strictest and most literal sense, does not prohibit the Israelites from such food. Of those offerings, which in Hebrew are called *Schelamim* (שלמים), and which in my German version of the Bible I have termed *Freudenopfer*, (joy-offerings), although *Gastmahlsopfer* (feast-offerings), which I here employ, is, perhaps, a preferable translation, only the fat pieces, which the Israelites durst not eat, were burnt on the altar*, and then the priest received his portion. Now, when an Israelite wished to eat of

but which, in my opinion, only augments it. As the word *לֹא*, *not*, is wanting in a Koningsberg MS. he proposes to leave it out, which would make the meaning of the passage to be, *Whoever killeth and bringeth, &c. incurs blood-guiltiness, &c.* Now, Dr. L. thinks, that death was here denounced against the man who, after killing the animal any where else without or within the camp, then brought it to the priest to offer it, and to sprinkle the blood on the altar. But where was the necessity of punishing this with death? The priest had only to reject it when thus brought; and this would have been sufficient. Besides, would any man have acted so preposterously as first to offer a beast in sacrifice to any other god (for this is what Moses, in ver. 5,—7. suspects), and then bring it to the altar of Jehovah, that *his* priest might perform with it all the solemnities of a sacrifice in honour of him? One would think, that he whose object was the former act, would not have done the latter. And if the beast was killed without the camp, how could he bring its blood for sprinkling the altar? It must have coagulated long before he could reach the altar.

* Lev. iii. 16, 17. vii. 23,—25. What these fat pieces were, we learn from Lev. iii. 3, 4, 9, 10, 14, 15. on which passages, the remarks offered in my German version, may serve to illustrate any obscurity with regard to the parts meant, as, for instance, with regard to the (*Fettshwanz*) fat tail, or (Eng. vers.) *rump*.

the flesh of a bullock, a sheep, or a goat, he was obliged to bring the animal as an offering, and then devour it at an offering-banquet. This would be a hard law for us Germans, who are far more accustomed to animal food, and, excepting the very poorest people, have it daily on our tables. But the inhabitants of more southern countries are, in general, not so carnivorous as those of colder climates; for they look upon the daily use of animal food as unwholesome*; and even in our northern regions, the appetite for flesh-meat is apt to diminish in the warm days of summer. In this point, therefore, according to *Montesquieu's* observation, the laws must in a great measure be regulated by the climate; for what is practicable in one climate, will in another prove impracticable; and the great difference between northern and southern stomachs, is fully established from the history of the monastic orders†. But besides this, while the Israelites continued in the wilderness, and without any appropriated lands, they could but very seldom have indulged in a flesh diet, unless they had wished to see their herds extirpated. Indeed, properly speaking, only the two tribes of Reuben and Gad, with the half-tribe of Manasseh, had herds‡; the other tribes being, in general, but poorly provided with cattle. In these circumstances, the Israelites would easily bear a law like this, which to us would be intolerable; and although it was not expressly enacted from any political consi-

* See *Niebuhr's Arabia*, p. 9, 52.

† See *Mosheim's Institutiones Hist. Eccl. antiq. et recent.*—Sæc. IV. Part II. cap. iii. § xiv. p. 169.

‡ See *Numb.* chap. xxxii. -

deration, but, as we shall presently see, from abhorrence of idolatry, it nevertheless did actually contribute in some measure to the preservation and increase of their cattle ; and thus among the more ancient nations, we find laws prohibiting first the slaughter of the ox, and in the very next period, that of the cow, that the increase of cattle requisite for the rising art of agriculture might be provided for.

The reason and design of this law we have no need to conjecture ; for Moses expressly mentions it in ver. 5, 6, 7. Considering the propensity to idolatry which the people brought with them from Egypt, it was necessary to take care lest, when any one killed such animals as were usual for sacrifices, he should be guilty of superstitiously offering them to an idol. This precaution was the more reasonable, because, in ancient times, it was so very common to make an offering of the flesh which a person intended to eat *, and because, as just remarked, the Israelites could but rarely enjoy that sort of food in the wilderness. And hence arose a suspicion not very unreasonable, that whoever killed animals, usually devoted to the altar, offered them of course ; and therefore Moses enjoined the Israelites not to kill such animals otherwise than in public, and to offer them all to the true God, that so it might be out of their power to make them offerings to idols, by slaughtering them privately, and under the pretence of using them for food.

* According to *Chardin*, Part IV. p. 253. the butchers in Persia still slaughter all beasts with their heads towards Mecca ; and no doubt this practice has religious and sacrificial ideas at bottom.

It will now be understood why Moses, the great enemy of idolatry *, denounces the punishment of death on the transgression of this law, that is, on the slaughter of those animals, when not killed as offerings before the tabernacle. Whether this punishment was too severe, comes not here properly under consideration, but will be discussed under the head of Penal Law. At present, we have only to illustrate the expression, transferred from a more ancient law, *To him it shall be accounted blood-guiltiness: he hath shed blood.*

The Israelites had just come from a country in which it was usual to punish with death the crime of killing certain sacred animals, and *that*, as Cicero has remarked, expressly for political reasons, and because of their important uses to Egypt, although another pretext was commonly assigned for it. On some occasions, this crime was punished with far more inexorable severity than even the murder of a human being, of which *Diodorus Siculus* relates a remarkable example †. Some animals were in every part of Egypt

§ * See Art. XXXII.

† In Book I. § 83. Whoever killed, whether wilfully, or by accident, an *Ibis*, or a cat, which were held sacred, because without them Egypt must have been over-run with snakes and mice, could not possibly escape being put to death; for on such occasions, the people instantly assembled, and dispatched the wretched criminal, without waiting for a judicial condemnation. Even at the time when Rome was the terror of the world, and particularly of Egypt, and when the Egyptians were endeavouring by all possible courtesy to gain the friendship of the Romans, and *Ptolemy Auletes*, their king, requested the title of an ally of Rome (*amicus populi Romani*); it happened, that a Roman in Egypt killed a cat. The people collect-

alike sacred and inviolable, as the *Ibis*, the cat, and the cow : others again, as the sheep, only in certain districts ; and almost every district had its own peculiar sacred animals. This custom was certainly of great antiquity ; for we find even Moses, in Exod. viii. 26. declaring to Pharaoh, that the Israelites could not offer sacrifice to their God in Egypt, because their offerings, consisting of oxen, sheep, and goats, were so abominable in the eyes of the Egyptians, that they had reason to apprehend being stoned, if they attempted to sacrifice them within that country. Nor was this apprehension by any means groundless ; for it is a certain fact, that during the Egyptian festivals, acts of violence often took place, from the people of one district sacrificing animals, which their immediate neighbours accounted inviolable.

The Israelites having thus been accustomed to a law which made the killing of certain animals murder, according to the prophet Isaiah's expression, *He who killeth an ox, is as he who slayeth a man**, God consecrated to himself, during their abode in the wilderness, all their oxen, sheep, and goats, in so far at least, as that they were not to be killed any where but at his altar ; declaring it blood-guiltiness to slaughter them elsewhere. Nor was this a piece of craft and superstition on the part of Moses. He did not, like the Egyptian priests and the Brahmins, make the Israelites

ed in a moment ; and although the king tried to pacify them, neither that, nor their universal dread of the Romans, could prevent the murder of the cat from being revenged ; and the man was put to death, even though he had done it accidentally.

* See my Notes to *Lowth on Hebrew Poetry*, Sect. ix.

believe, that the souls of their forefathers passed into animals, and especially those of the pious, into the bodies of cows. He only consecrated certain animals for sacrifice, and, according to an Egyptian law already in force, made the slaughtering them otherwise than as offerings, blood-guiltiness, or, as we would call it, murder ; just as in England, the legislative authority sometimes constitutes a misdemeanour, a felony. In such cases, when, in framing a new law, recourse is had to the language and enactments of one already established, its introduction becomes easier, and the people are sooner reconciled to it ; for it often depends very much on its terms and phraseology, whether a law shall be respected, or become odious, and be continually transgressed. From the resemblance it bears to one to which they have been accustomed, though it have nothing else to recommend it, the people are led to conceive an idea of its equity, and, of course, to conform themselves to a law, against which, but for this, they would only have rebelled.

The law in question *might* be observed in the wilderness, where the Israelites kept closely together, and from their poverty ate but little animal food ; but in Palestine, and when their circumstances were improved, it would have been an intolerable grievance ; for many of them lived at the distance of several days' journey from the sanctuary, at which alone offerings durst be made ; and they, of course, must either have altogether denied themselves the use of the flesh of oxen, sheep, and goats, or else have travelled long journies to present them at the altar, before they could taste it. But, in fact, Moses himself shews

that it was a law intended only for their situation in the wilderness, by the phrase, *without or within the camp*; and in his last given law, in the fortieth year of their pilgrimage, just before their entrance into Palestine, he explicitly declares it repealed as soon as they should there abide; permitting them (Deut. xii. 15, 16, 20,—22.) to kill and eat oxen, sheep, and goats, at their pleasure in any part of the country; provided they did not regard them as sacrifices, and abstained from their blood, which the heathens in *their* sacrifices were wont to drink. He tells them, they might then eat them, *even as the hart and the roe*, that is, with as full liberty, and likewise, without the smallest idea of offering them; for the hart and the roe might not be brought to the altar.

The concluding clause of the law, *a perpetual statute for your posterity*, I have already explained under Art. IX. of the Introduction.

In the first edition of this work, I expressed an opinion, that “this temporary law was probably never
“fully enforced, even while the Israelites continued
“in the wilderness, and that Moses might not, perhaps, have inflicted its capital punishments with the
“threatened severity. The prophet Amos, in chap.
“v. 25. says, that the Israelites brought no offerings
“to God in the wilderness during forty years. Now
“this can scarcely be understood of the *public* offerings of which Aaron had the charge, as, for example, the daily sacrifices, and those appointed for the
“high festivals; and therefore it must mean, that
“private individuals did not bring the feast-offerings,
“of which we have hitherto spoken. Could they

“ have altogether abstained from flesh ? This we can
“ scarcely suppose : and, indeed, in the very next
“ verse, the prophet goes on to say, that they practised idolatry. Probably, therefore, this law, with
“ all its severity, was not able wholly to prevent secret
“ idolatry, and offerings to idols in forbidden places.
“ It might, however, limit and lessen these practices ;
“ and this, and not the mere hanging of transgressors,
“ is often the whole object of penal laws.”—I do not altogether retract this opinion ; but the passage in Amos admits of other explanations. What these are, however, it would take much room to detail, and to nine-tenths of my readers prove, after all, but little interesting.

ART. CLXX.

Law respecting Game.

§ 7. THE game which an Israelite found in his field, he might without scruple consider as his property, and hunt, catch, or kill, as he chose ; for there were no noblesse who claimed an exclusive right of hunting, or exercised it on the property of others ; nor was there a king for some centuries after this period.

The only limitation imposed by Moses on the right of the proprietor in this point, related merely to the seventh year. What grew in that year on the fallow land, according to Exod. xxiii. 11. and Lev. xxv. 7. was for the game ; and, therefore, it is clear that no one durst then scare it from his fields, nor was it, perhaps, to be molested, when there seeking for food.

This regulation served likewise to re-establish the game, which after six years persecution among a nation of downright farmers, must have always become very scarce. For the game from the neighbouring parts of Arabia, and from Mount Lebanon, would naturally settle, on finding security and abundant food all over the land.

This is the only express law that Moses has given for the preservation of game ; which, however, must have been of material consequence to the Israelites, considering how often he mentions the *hart* and the *roe* among their articles of food ; and that in announcing to them the future permission to kill and eat oxen, sheep, and goats, every where throughout Palestine, he makes use of an expression taken from these, the chief objects of the chase, telling them that they should eat them, *even as the hart and the roe*. From the analogy of the law concerning bird's nests, which will be illustrated in the following Article, we might perhaps infer, that no one durst kill the hind, either when pregnant, or when suckling her calf. As it is always a sacred rule with hunters to spare the hinds, this would in so far have served, but still it would not have *sufficed* for the preservation of the game. Moses, however, gives no ordinance for the regulation of the chase in the woods, heaths, wastes, and commons, nor can any thing relative thereto be guessed from his writings.

But how, it will be said, could the game, which with him seems after all to have been an object of *some* moment, have been preserved in the woods alone, considering that there was no order of noblesse

privileged to exclude others from the chace, and interested in sparing it for their own amusement. My ideas on this point are these : As to Mount Lebanon, nature there protected it sufficiently ; for it was too extensive and rugged to admit the least chance of its extirpation ; and in regard to the other parts of Palestine, Moses might safely leave it to the posterity of the Israelites, when there settled, to make laws suited to their respective circumstances ; for it is certain that no one set of game-laws can be properly adapted to a whole country. They must be of one description for the boundaries ; of another, for the vicinity of woods ; and of a third, where agriculture is of such consequence as to render game almost a nuisance. But from the lawgiver of a people as yet wandering in a desert, we cannot reasonably look for regulations as to such *minutiæ*. To be of any use, these must be dictated by local policy, and cannot be general laws ; and it was enough that Moses, by his law respecting the sabbatical year, provided for the periodical renovation of the game.

What has been already stated relative to this subject, under Art. XL. I need not here repeat.

ART. CLXXI.

Of the Law respecting Birds' Nests found without one's Property.

§ 8. For the preservation of birds, Moses gave a law, the more deserving our notice, that it is really well worth imitation in every country, and particu-

larly in a new country, into which colonies are carried. Of the nature of this law, which a LINNÆUS would certainly be much more likely to understand, than most theological commentators, several of these have given strange explanations. Thus Heumann*, from the expression, *that it may be well with thee, and that thou mayest prolong thy days*, supposes it was intended merely for children; and Nonne† holds it to be a prohibition of marrying at once a captive mother and her daughter. Whoever has a mind for some amusement, may read their Dissertations; but every sportsman, and indeed every bailiff, will think he understands this law better, and be ready to remark, that it must have been expressly intended for the preservation of birds.

It stands in Deut. xxii. 6, 7.; and whoever wishes to see it more fully illustrated, and certain objections refuted, is requested to peruse my Dissertation entitled, *Lex Mosaica, Deut. xxii. 6, 7. ex Historia naturali et moribus Ægyptiorum illustrata*, as it is reprinted with additions in the second part of my *Synagma Commentationum*. I here give only an abstract of that Dissertation.

It is the command of Moses, that if a person find a bird's-nest in the way, whether on a tree or on the ground, though he may take the eggs, or the young, he shall not take the mother, but always allow her to escape. It is clear that he here speaks not of those

D d 2

* *De Legis divinæ paradoxæ, Deut. xxii. 6, 7. exhibitæ sensu et scopo, Dissertatio.* Gott. 1748.

† *Dissertatio de Tsippor, et Deror.*

birds which nestle upon people's property ; in other words, that he does not, for instance, prohibit an Israelite from totally destroying a sparrow's or a swallow's nest that might happen to be troublesome to him, or to extirpate to the utmost of his power the birds that infested his field or vineyard. He merely enjoins what one was to do on finding such nests *on the way*, that is, *without* one's property : thus guarding against either the utter extinction, or too great diminution of any species of bird indigenous to the country. And this in some countries is still with respect to partridges an established rule ; which, without a special law, is observed by every real sportsman, and the breach of which subjects him to the reproaches of his brethren.

Nor would any farther illustration be necessary, if Moses spoke only of edible birds, and as if merely concerned for their preservation. But this is not the case. His expression is so general, that we must needs understand it of all birds whatever, even those that are most destructive, besides what are properly birds of prey. And here many readers may think it strange, that Moses should be represented as providing for the preservation of noxious birds ; yet, in fact, nothing can be more conformable to legislative wisdom, especially on the introduction of colonies into a new country. To extirpate, or even to persecute, to too great an extent, any species of birds in such a country, from an idea, often too hastily entertained, of its being hostile to the interests of the inhabitants, is a measure of very doubtful policy. It ought, in general, to be considered as a part of Nature's bounty, bestowed for

some important purpose; but what that is, we certainly discover too late, when it has been extirpated, and the evil consequences of that measure are begun to be felt.

In this matter, the legislator should take a lesson from the naturalist. LINNÆUS, whom all will allow to be a perfect master in the science of natural history, has made the above remark in his Dissertation, entitled, *Historia Naturalis cui Bono?* and gives two remarkable examples to confirm it: the one, in the case of the *Little Crow of Virginia*, (*Gracula Quiscula*) extirpated, at great expense, on account of its supposed destructive effects, and which the inhabitants would soon gladly have re-introduced at double expense*; the

D d 3

* To illustrate the summary decision of *Linnaeus* on this point, I shall here adopt the account given of the circumstance in the *Hanover Magazine* for the year 1767, p. 622 “ In the English colonies of North America, it was remarked, that a certain sort of crow frequented the pease fields; and in order to put a stop to its ravages for ever, its utter extirpation was resolved on. But this was no sooner effected, than an insect of the beetle kind (*Dermestes Pisorum*, now) *Bruchus Pisi*, which had always been known also to do some mischief to the pease, multiplied to such a degree that very few pease were left. An intelligent naturalist thought this occurrence worth investigation, and found that the crows were not in quest of pease, but only devouring these beetles; and, of course, that had they not been extirpated, these insects could not have increased so much, and the crops of pease would have been more abundant.”— In addition to this detail, I subjoin what follows in the same Magazine, relative to the crow in Sweden. “ At somewhat less expense, the same truth was sometime ago confirmed in Sweden. The common crow (*Corvus Cornix* Linn) was thought to be too fond of the young roots of grass, being observed sometimes to pick them

other, in that of the *Egyptian Vulture*, (*Vultur Percnopterus*, Linn.) And the inference he makes is to this effect, that these creatures of prey rid the earth of dead carcasses, and make it wholesome and comfortable, besides serving to maintain a due proportion between the different animals, and to prevent any one kind from starving the rest. The latter of these birds, which *Linnaeus* calls the *Mountain Falcon*, is the *Percnopterus* of *Gesner's Ornithology*, (chap. viii. ix.) called in German, *Geyer Adler*, and is at this day known in Egypt by the very same name, (*Racham*, or, as *Hasselquist* writes it, *Rachaeme*,) under which it appears in the Hebrew Bible (רַחַם), Lev. xi. 18.; on which passage the reader may consult the remark in my version, and my *Questions to the Arabian Travelers*, p. 333,—336. *Hasselquist*, in his *Travels*, and also in the *Memoirs of the Swedish Academy*, vol. xiii. describes it very fully, and particularly details the important services it renders to the people of Egypt, Palestine, and Arabia. He observes (not indeed in very elegant Latin, but still the observation is highly instructive as to the point in hand), that from the consideration of its services, they are led to acknowledge, with gratitude and veneration, the wisdom of divine Providence in its creation. In the city of Cairo, every place is so full of dead carcasses, that the stench of them would not fail to produce

“ out, and lay them bare. Orders were therefore given to the people to be at all pains to extirpate them; till some person, more judicious, opposed this, and shewed that it was not the roots of the grass, but the destructive caterpillars of certain insects which fed on them, that the crows searched for and devoured.

putrid diseases ; and where the caravans travel, dead asses and camels are always lying. The *Racham*, which molests no living thing, consumes these carcasses, and clears the country of them ; and it even follows the track of the caravan to Mecca, for the same purpose : And so grateful are the people for the service it thus does the country, that devout and opulent Mahometans are wont to establish foundations for its support, by providing for the expense of a certain number of beasts to be daily killed, and given every morning and evening to the immense flocks of *Rachams* that resort to the place where criminals are executed, and rid the city, as it would seem, of *their* carcasses in like manner. These eleemosynary institutions, and the sacred regard shewn to these birds by the Mahometans, are likewise testified by Dr. Shaw, in his Travels.

In my Dissertation on this law above mentioned, I have adduced some other examples to the same purpose, of birds belonging to Syria and Palestine, which, though not edible, are of most important use, viz. the *Ibis* (*Tantalus Ibis*, Linn.), that lives on snakes, and was held sacred by the Egyptians, because it devoured the snakes in the deserts before they came into Egypt ; the *Seleucis*, (*Turdus Seleucis*, Linn.) ; or, as the Persians call it, *Abmelek*, which clears the land of the swarms of locusts that infest it ; and the *Myiagrus*, (, Linn.) which destroys the fearful swarms of flies that overspread Egypt, and on that account has had the honour of being invoked for aid as a god, with prayers and offerings. For a more particular detail relative to these birds, I refer to the Disser-

tation itself, and proceed to illustrate the subject by an example that occurs at home.

Every one knows what vexation sparrows-occasion to the owners of gardens and corn-fields. In the year 1745, fields were not unfrequently to be seen so completely destroyed, that scarcely the seed remained; and in the gardens which they haunt, they pick the pease, when they spring, out of the earth, with such avidity, that a crop cannot be raised. Their excessive multiplication, therefore, ought certainly to be prevented; and it is the right and interest of every householder to extirpate them on his property. As the mischief they did about thirty years ago, was so very great, particularly in Prussia, where the laws take more concern in matters of œconomy than in other countries, there took place, if I rightly remember, at the instigation of a person whose name was *Kretschmar*, such a violent persecution of the sparrows in Prussia, as if their utter extirpation had been determined on. This persecution was just; but it was carried too far, for *Kretschmar* was too great an enemy to the sparrows; being, indeed, a good œconomist, as far as a good head, without study, could make him so, but then quite unacquainted with natural history. And the effect of his ignorance soon appeared; for caterpillars multiplied to such a pitch, that it was found necessary to put a stop to the persecution, that the sparrows might destroy them. This they are known to do with the greatest avidity; and they are particularly hostile to one species of caterpillar, as described in the *Wittenberg (Intelligenz-Blat) Magazine* for 1771, No. 31. It is a well-known circum-

stance, that in the year 1761, after the conclusion of the war, when the sparrows in this corner withdrew far from the city into the fields, because among the great quantities of spilled corn, they found superabundance of food, it was impossible to protect the gardens about Gottingen from the depredations of the caterpillar.—If a printed testimony of the merits of the sparrow in this respect can be accepted, it may be found in the *Brunswick (Anzeige) Journal*, for 1760, to this effect: “To the honour of the sparrows I
“ must observe, that in spring they search for no
“ food more keenly than for young caterpillars among
“ the leaves and blossoms.”—In North America, another evil has been found to result from destroying too many of these birds. The gnats increased to such a degree, especially in moist places, that the people and the cattle were harassed by them much more than formerly.—See *Hanover Mag.* for 1767. No. 39. p. 622.

These examples serve pretty strongly to shew that in respect, at least, to birds, we ought to place as much confidence in the wisdom and kindness of Nature, as not rashly to extirpate any species which she has established in a country, as a great, and, perhaps, indispensable blessing. Limit its numbers we certainly may, if they incommode us; but still so as that the race shall not become extinct. Of quadrupeds and insects I say nothing, because, with regard to them, we have not such experience to guide us. No inconvenience has arisen in England, nor even in that populous part of Germany between the Weser and the Oder, from the loss of the wolves; although I cannot

understand, but must leave it to naturalists to find out, how it should happen, that, in any country, *beasts* of prey can be extirpated with less inconvenience than *birds*; wild cats, for instance, and to bring the parallel closer, than owls, both of which live upon mice?

There are yet *three* peculiar circumstances to be noted, which would naturally make the Israelitish legislator singularly attentive to the preservation of birds.

1. He was conducting a colony of people into a country with which they were unacquainted, and where they might very probably attempt to extirpate any species of bird, that seemed troublesome, without adverting to its real importance; just as the Virginian colonists did, in the case of their crow.

2. Palestine is situated in a climate producing poisonous snakes and scorpions, and between deserts and mountains, from which it would be inundated with those snakes, if the birds that lived on them were extirpated.

3. From the same deserts too, it would be overwhelmed with immense multitudes of locusts and mice, if it were destitute of those birds, that resort thither to feed on them; not to mention the formidable swarms of flies in the East, and particularly in Palestine, of which I have taken notice in my Dissertation on this law.

Whether Moses intended, at the same time, to use, and, as it were, to consecrate this law, as an emblem of compassion, that the Israelites might be led to consider the taking the dam along with her eggs, or young, as an act of cruelty, I venture not to determine, be-

cause he himself speaks not a word of compassion or cruelty. My ideas and doubts will be found in § 5, 6, 7, 8. of my Dissertation, in which also, at § 4. I have made some remarks on the legislative policy of the Egyptians; which, in like manner, provided for the preservation of birds, but with sanctions of greater severity, and with a mixture also of fraud, especially in the use they made of the doctrine of transmigration. But of all such fraud Moses, educated though he had been in their philosophy, kept perfectly clear, always speaking with that sacred regard to truth, which became a legislator sent from God.

That Moses should have affixed no punishment to the violation of this *game law* (for such, in my opinion, is its most proper name) but merely promised, and *that* almost in the language of the fifth commandment, blessings from heaven to those who observed it, for their compassion to animals, and the mothers of animals, will not appear at all strange to any man, that has any ideas of legislative policy. He who finds a bird's nest, and carries off both dam and brood, commonly does so without witnesses, and cannot be found out. Now to encourage informers was no principle of Moses: on the contrary, we shall see under the head of criminal law, that, with the exception of one single case, (idolatry) he prohibits informations, and, of course, prohibits courts of justice from having informers. I have already mentioned, that in some parts of Germany (I shall only specify Mecklenburg and Saxony) where partridges are not shot, but snared, it is a *rule* to let the hen escape. It is not properly a law, but, as I have termed it, a *rule*, the breach of which is

punished, by the transgressor being no longer considered as a true sportsman, but a poacher, and a disgrace to the fraternity of *Jagers*. In the present case, however, as there was not merely an understood rule, but an express written law, the magistrate was certainly authorised to punish transgressors at his pleasure : and if that was *not* done, still, according to what we shall have to say of offerings under the head of criminal law, it will appear probable, that conscience, where a man was conscious of such a crime, must have required an offering, along with the confession of guilt. The blessing of God to the keepers of a law so important to Palestine, Moses certainly could promise with much more propriety, than any of our legislators, (although indeed they do sometimes; *sub spe rati*, venture to make such promises) because he spoke as a prophet, and as a legislator sent from God, and because the Israelitish government had the form of a theocracy. But to none other, than a divinely inspired legislator is it competent to denounce curses, or promise blessings, in the name of the Most High.

It is singular, after all, that the very blessing of the fifth commandment is annexed to this law. In following out the idea, we are almost tempted to believe, that Moses had designed to connect this law for the preservation of birds, with that commandment, and to represent the mothers even of beasts as objects (of our veneration, shall I say? No, that were too much, but) of our dutiful regards : so that parents, even those of inferior animals, deserve to be viewed with emotions of tenderness and gratitude, in recompence, as it were, for their care in the propagation of their species.

Nor does this idea absolutely exclude that of sympathy or compassion ; it but modifies it more.—The law already quoted, prohibiting the slaughter of the cow with her calf, or the ewe with her lamb, in the same day, seems intended to impress the same emotion of tenderness ; for I can use no other term in speaking of animals : but, in the case of the human species, it rises into esteem. That law stands in Lev. xxii. 28. and those who entertain philological doubts whether the *cow* is there meant, or (because the word is construed as a masculine) the bull with his calf ; and are so simple as not to know, that we can, in general, tell the mother of a beast with certainty, but not the father, will find farther satisfaction in my Dissertation on the law now under discussion ; for it is not my wish to trouble the readers of the present work, with philological investigations, but to divert them from the main object as seldom as possible.

APPENDIX TO ART. CLXVI.

A

DISSERTATION

ON THE

MOST ANCIENT HISTORY

OF

Horses and Horse-breeding,

IN

PALESTINE AND THE NEIGHBOURING COUNTRIES,

ESPECIALLY

EGYPT AND ARABIA.

PREFACE.

As the Third Part of my Mosaic Law is unequal in size to the other Parts, I have been requested to attach an Appendix to the second edition, in order to remedy this fault : and having, in Art. CLXVI., promised to treat somewhere of the most ancient History of Horses and Horse-breeding, for which the Bible furnishes documents, not sufficiently attended to, it has occurred to me, that this would form the fittest subject of an appendix, more especially considering its close connection with various parts of the Mosaic jurisprudence. Should this essay be printed separately, I must beg its reader to bear in mind, that it was but an Appendix to an Article in my Mosaic Law, and to regard it in that light. It is, in fact, (and so perhaps I should have called it) but a *Fragment* of the history in question, collected, however, chiefly from the Bible, that is, from the oldest records of the human race, the authors of which lived in the very countries of which they write. I should be glad, if those persons, who may deem it worthy their attention, would previously peruse the chapter concerning the horse, in *Buffon's Natural History*, particularly those passages that treat of the differences and varieties of horses, as occasioned by their several native countries.

MICHAELIS.

Gottingen, July 26, 1776.

A DISSERTATION

ON THE ANCIENT HISTORY OF HORSES, &c.

INTRODUCTION.

OF all the varieties of horses with which we are acquainted, those of Arabia are at present accounted the noblest; and they are purchased at very high prices, especially by the English, in order to improve their own breed, by crossing the two kinds, and thus uniting the size and strength of the English horse, with the fleetness and elegance of the Arabian. Hence proceeds the great preeminence of the English racers over all the other horses of Europe, and, perhaps, over those even of Arabia itself: for, with equal fire and fleetness, the larger horse, by reason of its longer pace, will always outstrip the lesser.

In all other countries but Arabia, a cross with a foreign breed, and especially from a distant country, is thought necessary to the improvement of their horses; but the Arabs are so far from entertaining this opinion, that they value those horses most, whose breed for centuries back has been purely Arabian. The inference which some have hence deduced, appears extremely plausible, namely, that Arabia had been by Nature herself destined for the native country of the horse; and it would rise to a still higher degree of probability, if it were true (as is maintained) that the breed of horses degenerates in

other countries, if not crossed from time to time with a foreign breed; and especially, where the stallions and mares are too nearly related. But this latter assertion is not quite correct, as I have remarked in another place *. The inference itself will be found

* In my *Dissertation on the Mosaic Laws prohibitory of Marriages between near Relations*, p. 115. iid. Ed. And I here reprint the whole passage, with two additions, because many readers of the present Essay may not have that Dissertation.—“ That my readers may better understand the fundamental idea here advanced,” (viz. that such marriages were forbidden, for the same reason that the union of horses nearly related, is avoided), “ and may, in judging of it, keep duly separate certain rules belonging to horsebreeding, which, though perfectly distinct, have been confounded together by *Buffon* and *Hutcheson*, I find myself obliged to relate some particulars of that art, as I have heard them from those best acquainted with it. In order to obtain a nobler breed, the best horses are selected: for if only middling or bad horses are employed, the breed will always degenerate. And here it is obvious, that those in the vicinity of each other, must not be always allowed to unite, because they will not always be the best and noblest; but that mares and stallions must be carefully selected. For it is only in the case of such improper connexions, that a breed will degenerate. Good horses of one and the same climate do not debase it; only they do not improve it.” Even in great studs, the stallion is often the father of the mare he covers; nor has any degeneracy, or other detriment, been observed to follow from this practice.—“ *Secondly*, Horses from very different climates are brought together, in the view of new excellencies resulting from their union: for example, the present race of German horses is large and strong, such as is requisite for hard work, and especially for the duty of cavalry in charging; but then they want the lightness and neatness of those from more southern countries; which, on the other hand, are smaller, and not so well adapted for cavalry-purposes. Now, in order to improve them, if beauty and appearance be our object, we employ Spanish, and if the greatest possible fleetness, Arabian stallions; just as the En-

in *Buffon*, who, after repeatedly deriving various breeds, such as the Egyptian and Persian, &c. from that of Arabia, gives it as his opinion (in vol. iv. p. 249. of his *Histoire Naturelle*) not indeed in terms of absolute decision, (for he admits other possible reasons for the beauty of Arabian horses), that Arabia ought to be considered as the natural and original country of the horse.

It will, however, be shewn in the sequel, that Arabia had its horses from other countries, and *that* not at an early period. Hence, no doubt, the question will arise, how it has happened that the Arabian horses have become so superlatively excellent? For with all this, I by no means deny, that those very countries have been since indebted in their turn to Arabia for the best horses for the improvement of

E e 2

“ glish racers are usually bred between English and Arabian horses, “ because the union of English size and strength, with Arabian light- “ ness and mettle, serves to augment their swiftness. *Thirdly*, I have “ had, from Mr. *Ayrer*, our present university riding-master, a man “ whose veracity is unquestionable, an account of an experiment “ which he himself has seen tried in great studs. Horses, the produce “ of the same parents, and themselves noble and beautiful. having been “ united, their progeny proved not at all degenerate; only that their “ size was less, and their limbs finer; and on *their* union in like man- “ ner, the third generation turned out still smaller and finer-limbed, “ almost like the horses of Oeland, and the north of Scotland; still, “ however, retaining, without debasement, all the good qualities and “ beauties of their forefathers; only they were too slim and fine for “ use.” This experiment pretty clearly shews the reason that, in countries where horses run wild, the breed becomes beautiful and spirited, but small and slender, in a word, such as is found in Oeland and the Scottish Highlands.

their respective breeds. We shall, moreover, see, that, widely spread as the horse now is, there was a time when he was but rare in the earth, and but in few countries. The patriarchs had him not; and to the Israelites he was long a foreign animal. Agriculture was carried on with oxen and asses; and the beasts used for travelling and burdens, were asses and camels.—But to proceed to the subject itself.

FIRST PERIOD.

I. 1. Moses repeatedly describes the riches of the patriarchs as consisting of their herds, among which, while oxen, sheep, goats, camels, and asses, are enumerated, we never once find horses mentioned.

Abraham, with all his herds and servants, migrated across Mesopotamia into Palestine, from a more northern region, and, as I believe, situated between the Euxine and Caspian seas, where the most ancient settlements of the Chaldees * lay. When his servant, sent to bring his son a wife from Mesopotamia, gives, in Gen. xxiv. a description of all his master's riches, we find them consisting of sheep, goats†, oxen, camels,

* I intend soon to expatiate on this subject in a particular treatise. The *Chalybes* are, in my opinion, the ancient Chaldees; and those around Babylon, in what was afterwards called Chaldæa, a later colony of the same people. Should the proofs of this prove as clear to my readers as they have been to my hearers, many points in ancient history will assume a new aspect, and receive more light; besides that a result altogether unexpected, relative to the history of nations, will be the consequence.

† As in my version, as well as those of other translators, *goats* are here missing. I must remind my readers, that the Hebrew צֶמֶד comprehends both sheep and goats. In my version, I did not think it necessary to insert both; but here, where I am myself the relater of

and asses, silver, and gold, men-servants and maid-servants; and in Gen. xx. 14. a Philistine king is represented as making a present to this same Abraham, of sheep, goats, oxen, man-servants, and maid-servants; but on neither occasion are horses mentioned. Still more remarkable is the passage, Gen. xii. 16. For,

I. 2. Abraham is at this time in the most ancient country of horses, with which history makes us acquainted, that is, in Egypt; the country in which afterwards Moses mentions horses for the first time, and from which, even in Solomon's time, Asia received its best horses. The king of Egypt, in reparation of an injury done the patriarch, resolves to make him a rich present, and accordingly sends him *sheep, goats, oxen, asses, man-servants, and maid-servants, she-asses, and camels*. That Egypt had at this time *had* horses, is unquestionable; for in the days of his grandson, Jacob, not only is riding on horseback customary, but even the yoking of horses to carriages. The former is always *first* practised, between which, and the introduction of the latter, there sometimes intervenes the space of many centuries. When, therefore, we find not this noblest of animals among these presents, one or other of the following inferences seems warrantable; either, that it was conceived that he would not propagate in Palestine, or, at any rate, that Abraham would not know how to make use of him, nor find horse-breeding a profitable concern, in his œconomy. And this is the more remarkable, when we consider, that

E e 3

the story, I do so, because from other passages it is certain, that goats constituted a great proportion of the patriarchal herds.

Abraham originally came from the neighbourhood of the very countries which, in after ages, became so renowned for horse-breeding.

I. 3. The riches of Isaac are described in Gen. xxvi. 14. They consisted of great herds of sheep, goats, and oxen, to which were now to be added the fruits of his agricultural labours, ver. 12. No mention is made of horses.

I. 4. The herds which Jacob brings with him from Mesopotamia, consist of sheep, goats, camels, oxen, and asses, Gen. xxx. 43. xxxii. 5, 7, 14, 15. Still no mention of horses.

I. 5. Nor do the riches of Job include horses ; but he has sheep, camels, oxen, and a herd of asses, in which were 500 females, Job i. 3. *He* is, it is true, not a real, but a fictitious personage, devised for the illustration of a point of moral duty ; but his character and history are conceived with great beauty and skill ; and therefore the omission of horses and horse-breeding is the more remarkable. There might, however, be circumstances which prevented the author, whose judgment is so conspicuous in every part of the book, from assigning horses and studs to Job, notwithstanding his magnificent description of the war-horse towards the conclusion. The scene of the whole transaction is in the vale of *Gutta*, that is, about Damascus ; and the time in which Job is placed, is during the residence of the Israelites in Egypt. The author, therefore, who was so well acquainted with the horse, must have thought that horses could not, with propriety, form any part of the herds of a person who then lived in the vale of *Gutta* ; so that most

probably there were then no horses in all that region, in which they are at present bred in such perfection.

Upon the whole, no mention is made of horses among the herds of the patriarchs, or of Job. Probably at this period, in that part of Palestine which Abraham, Isaac, and Jacob, traversed with their cattle, they were either not at all, or but very seldom to be found; at least we find them nowhere mentioned in the history, which is the more striking, as they immediately make their appearance on Jacob's removing down into Egypt.

I. 6. If, however, we admit the Septuagint version to be correct, they did so at a much earlier period; for, according to that translation of Gen. xiv. the Sodomites had not only horses, but even *cavalry*, for so ἡ ἵππος, in the feminine signifies. What I have there rendered *all the goods*, the LXX. render, *all the cavalry* of the Sodomites, which the four victorious petty kings had taken, and which Abraham retook. The last, however, of the three verses, δος μοι τας ἀνδρας καὶ τὴν ἵππον λαβέ σ' αὐτῶ, shews pretty clearly that they have here mistaken the sense of the original; for they make the *whole* booty which Abraham recovered, to be nothing but the Sodomitish cavalry; whereas the victors would hardly have taken it alone, without other plunder also. Yet Origen, who understood Hebrew, here follows the LXX. for he says, ἵππον Σοδομιταὶ νυν πρῶτον ἀνομασμένην, ὡς φαυλοὶ ἐχρῆν λεγόνται, that is, *Here cavalry are mentioned for the first time, and ascribed to the Sodomites as wicked people*, or, as φαυλοὶ might be rendered, *cowards*. Now the case stands thus: The Hebrew שָׁרָן, according as it is read *Re-*

chesch, or *Rechusch*, signifies a horse*, or a man's whole effects; and the LXX. probably preferred the former sense, because the patriarchs, to whom they might think horses unsuitable, were not here spoken of, but only the native inhabitants of Palestine†; and the Canaanites, some centuries afterwards, were famous for cavalry. That this was the reason of their interpretation is still more evident, when we look at ver. 12. where, in the very middle of the story, they render the same word (רֶכֶשׁ) quite differently, by the term παρασκευη, effects, or property; because there Lot is spoken of, to whom they did not choose to give any horses. So that, according to their ideas, the very same word was, in the very same chapter and story, to be understood in two very different senses, according as it was used of Sodomites or Non-Sodomites. This has a strange appearance. We should, methinks, throughout the whole chapter, without any such arbitrary distinction, explain it of one and the same thing. It does not follow, that, because the Sodomites were the ancient inhabitants of the land, and also Canaanites, they must have had horses: for, in the first place, the time of Abraham is far distant (at least 400, perhaps

* See Bochart. Hierozoicon. T. I. l. ii. c. 6. p. 100.

† Thus I find, that in one passage, Gen xlviii. 7. they mention horses, without any authority from the original; rendering כְּבָרֶת הָאָרֶץ, which makes about a German mile, ἵπποδρομον, or horse-ride. Did they think that the Canaanites reckoned distance by rides; or only avail themselves of an expression then usual in Egypt? This I do not decide. Whoever wishes to know what the ride was, (viz. somewhat less than a German mile—about a French one) may consult my 21st Remark on *Abulfeda's Geography of Egypt*.

600 years) from the period in which we read of the Canaanitish cavalry; and, in the *second* place, we shall hereafter see, that, even in Joshua's time, there was no cavalry in that part of Palestine which bordered on Sodom, but only in the northern part. In fact, I doubt much, whether cavalry could have acted in the valley where Sodom lay; for below was a lake covered with a layer, or stratum of bitumen and earth*, which, by the weight of horses, might not only have been shaken, but pierced, just like a bog. Even at present such ground would be deemed an absolute trap for cavalry, and the natives of a country, altogether of such a description, would never think of the establishment of any such force for their defence.

I. 7. If the common translation of Gen. xxxvi. 24. which I shall here give in the words of *Luther*, were right, *This is that Ana, who found out mules in the desert, while he kept the asses of his father Zibeon*; there must have been horses, perhaps wild horses, even before Esau's time, (for Ana was *his* father-in-law) in that part of Arabia, which was afterwards inhabited by the Edomites. This translation, however, has absolutely nothing in its favour, but much against it. For in not one of the Oriental tongues are *mules* called מִמְ; and therefore, if in Jerom's time † most expositors, and afterwards both the Arabic translators conjectured that to be its meaning, not adverting to the fact of

* See my *Historia Maris Mortui*, § 14.

† On this passage he says, "Plerique putant, quod Equarum greges ab Asinis in deserto ipse fecerit primus ascendi, ut mulorum inde nova contra naturam animalia nascerentur."

there being then no horses in the country, according at least, to any thing that we can gather from any other part of the Mosaic writings ; it was at best but a guess, and merits not the least consideration, especially as none of the really ancient translators here renders *mules*. But this version of the word has, besides, many arguments against it ; as, 1. The verb מוצא means *to find*, but not *to find out*.—2. Mules have, in Hebrew, another name, פרדים.—3. Mules could hardly be found out by man, but, if I may so speak, by nature, accidentally, being ingendered between a horse and an ass. After accident and brutal lust had made the discovery, it was imitated by man, and mules were produced by art.—4. Ana kept his father's asses : and had he discovered the way of producing mules, we should be led to conjecture, that he had also kept his father's horses ; but of that we find not a word.—To some of these objections, something may perhaps be said in answer ; but weighed against one bare conjecture, arising from ignorance of the languages, and repugnant to the whole tenor of the Mosaic accounts of Horses, they have certainly a great preponderance. How I understand the passage, namely, of the discovery of *Warm Baths*, in which perhaps an ass was scalded, like Charles IV.'s dog in those of *Carlsbad*, or the water of which the asses would not drink ; may be seen in my version of the Bible. I have the Syriac and Vulgate versions for my predecessors in this opinion : Jerom observes, that, in the Punic tongue, the word signifies a *Warm Bath** ; and it is certain,

* Nonnulli putant, aquas calidas juxta Punicæ linguæ viciniam, quæ

that in Arabic, **يَمَسُّ**, in the fifth conjugation, means *to bathe*. Other observations relative to the word, but mixed with mistakes, partly from the accounts of persons ignorant of the Oriental languages, will be found in *Montfaucon's Hexapla*. I shall only farther remark, that I think it probable, the warm baths discovered by Ana, may have been those near *Callirrhoe*, which discharge themselves into the Dead Sea : but my observations illustrative of this point, I reserve for the Second Part of my *Spicilegium Geographiæ Hebræorum exterræ*.

I. 8. This non-appearance of horses continues even in Arabia until the time of Moses, and thus far will I trace it, and then go back to the countries in which we find them earlier. In travelling from Midian back to Egypt, Moses (Exod. iv. 20.) has not a horse, but an ass. This, however, is but a trifle.—In the Arabian deserts the Israelites yoke *oxen* to the carriages in which their sanctuary is transported from place to place, Numb. vii. 3. Nor is this very important.—But the detail of their plunder in Numb. xxxi. after the conquest of five small Midianitish nations, is more decisive. It consisted of 675,000 sheep, 72,000 oxen, 61,000 asses, 32,000 virgins. But we find no mention of horses : so that these five Arabian peoples seem as yet not to have had any.

I. 9. It is only in Egypt, a country celebrated throughout all antiquity for its horse-breeding, that Moses, by far the most ancient of all authors, men-

Hebrææ contermina est, hoc vocabulo signari.—And to this opinion Jerom accedes, and translates, *aquas calidas*.

tions horses ; and he does it in such a way, as to authorise the conclusion, that they must have been there ever since Abraham's time, and perhaps even before.

In the time of Joseph, the moveable effects of the Egyptians, with which they purchased corn from Pharaoh, consisted of *horses*, sheep, oxen, and asses ; (Gen. xlvii. 17.) and here, as in our own style, the horse stands at the top of the list. I have hitherto left the lists of the patriarchal riches in the strange order (for such to us it appears,) in which we find them, satisfied with merely making a true transcript ; that this one, wherein the horse's rank accords more with our own ideas, and where Egyptian matters are in question, may appear the more striking. Egypt had now also, as I think, its carriages drawn by horses, as we shall soon after find them, in Exod. xiv. Joseph received from Pharaoh, as a mark of his dignity, the privilege of riding in the chariot next after the kings, Gen. xli. 43. When his father came down to Egypt, he sent him waggons for himself, and that part of his family that could not make the journey on foot, that is, the women and children, Gen. xlv. 19. 21. ; and the sight of them in Palestine seems to have been very strange : for Jacob would not at first believe that Joseph was alive, and continued quite indifferent to all the details of his sons, but when he saw the waggons, (ver. 27.) *his spirit revived*. Joseph also ordered his own chariot, and went to meet his father, Gen. xlv. 29. The old man lived 17 years in Egypt, by which time he had become so much familiarized to the sight of the horse, that we find him, in his last words making use of a figurative expression taken

from that animal ; *May Dan be a snake in the way, a Cerastes on the foot-path, that biteth the heels of the horse, and causeth his rider to fall back*, Gen. xlix. 17. Jacob died in Egypt, and desired to be buried in his hereditary sepulchre in Palestine. Joseph obeyed his wish, and his body was carried with great pomp to Hebron, accompanied by a great procession of horsemen and chariots, Gen. l. 9. ; and we can hardly help thinking, *war-chariots*, which, in Moses' time were in use in Egypt.

I have already remarked, that, among ancient nations, a considerable period must have intervened between the use of the horse for riding, and for carriages : and among any ancient people that had not learnt the art from others, in other words, that first broke and domesticated horses, the case seems to have stood thus. Before they had learnt the use of the horse, he must have been altogether wild in their country ; a long period may have elapsed before they hit upon the expedient of employing him as a beast of burden : and it is not impossible, that they may have looked on horses as game, and have shot and eaten them, especially the young ones. This is actually the case at present in a part of Southern Poland, which is, in a manner, the natural country of wild horses : and I have heard from a person of distinction, who possesses estates there, that the flesh of a young horse is said to be very well tasted, and is accounted a delicacy.—At any rate, it would be long before they fell upon the contrivance, or ventured on the attempt of making this strong and spirited animal serviceable for riding ; at least, *we* do not commonly

think of riding on the stag, though it answers just as well as on horseback. In process of time, however, some bold youth would venture to throw himself on the back of a horse ; and the experiment would naturally be repeated for amusement, or to shew a feat of strength and dexterity : and afterwards for the purposes of convenience and necessity. In such attempts many would no doubt break their necks ; but others would be more fortunate, and gain themselves the fame and name of (ἵπποδαμοί) *horse-breakers*, which we always find in the ancient poets, as a characteristic of heroism. To this achievement nature, in some measure, facilitates the way, because the wild horse is neither so large nor strong, as those bred in a good stud : and, like other animals, the horse soon conceives an attachment to the person that feeds him. Thus people would come gradually to ride, and to breed, break, and habituate horses to their service. Still, however, they would be far from the art of applying them to carriages : and, in my opinion, several ages—and, in mountainous or woody countries, still more—would be requisite, before they could contrive to bring the spirited animal to submit to that servitude : for, in fact, not only the unbroke, but even the saddle-horse, when first yoked to a carriage, shews himself so unruly, awkward, and unwieldy, so restive, and so much at a loss how to move ; that, amongst those ancient nations, who first learnt to make use of horses, many attempts in this way must doubtless have failed : and very probably they may have been brought to imagine, that the horse was not made for the draught, till, at length, some more tyrannical and resolute

genius compelled the animal to perform, what at first seemed quite unnatural to him. There is also this distinction to be attended to, that a horse may soon be trained to riding, by kindness from one whom he counts his friend,—particularly a young person, whose weight he does not feel: but when he is first yoked in a carriage, and will not move on, blows become necessary; and then he is wont to become restive, and to prance: and, until he has heard the rattling of the wheels, he must, at his first outset, be skittish and unmanageable, and still more so, if he feels the lash at the same time. In training a horse, more is effected by lenity than severity; but if severity alone is to carry the point, we must be very well versed in the management of the animal, and have invented a variety of contrivances for keeping him in order. Now, I cannot possibly conceive, those who first began to use horses, to have become such adepts in the *manege*, as that they could have taught them to draw in carriages; and I must, therefore, on the whole, be of opinion, that before the time of Joseph, the horse must have been for many ages either in Egypt itself, or in the neighbouring parts of Africa.

I. 10. There is still another point of view, in which our accounts of the very early use of carriages in Egypt are worthy attention, and that is, from their being precisely such as we should expect from the nature of that country. Many nations have learnt the use of carriages but at a very late period: nor is this to be wondered at, considering that it is not every country that is adapted for them. They require roads of a certain width, and not too slanting to one

side; and these are only to be found at first in a country naturally level. Where it is mountainous, and interspersed with woods, they must be formed by art; and that will not be done till the people become acquainted with carriages, from having seen them used by the inhabitants of other countries, and conceive a desire to imitate them in that convenience. And even then, the formation of roads is a difficult matter, unless where a powerful people, possessing a widely extended country, are united in one common system of police. So that in mountainous or woody regions, where there are only riding paths; and also in countries where many petty states are included within very narrow limits, and where a new territory commences every four or five miles, roads for carriages, unless promoted by some peculiar circumstances, will generally be of late introduction. Now, in the case of Egypt, all the circumstances were combined, that seem requisite for the early formation of such roads, and, of course, the early introduction of carriages;—extensive levels, an industrious and ingenious people, and at an early period, a race of powerful sovereigns, (the Pharaohs) to whose greatness and wisdom, the remnants of their works at this day bear the most ample testimony.

I. 11. In the time of Moses, horses were very plentiful in Egypt. In Exod. ix. 3. the king is threatened with a murrain, which was to attack the *horses*, asses, camels, oxen, and sheep; the horse being here again put at the top of the list, just as if the writer had been a German.—When the Israelites departed from Egypt, Pharaoh pursued them with all his ca-

valry, and 600 chariots ; and it would almost appear, that of infantry, which could not have marched with sufficient rapidity, there had been none in the Egyptian army, Exod. xiv. 6, 7, 9. With these chariots and horsemen, Pharaoh ventured along the bed of the Arabian Gulf, which an uncommon ebb had left dry ; and it happened, in consequence of a violent storm, what naturally must happen, that the horses, less accustomed to such a sight in Egypt, than ours, became restive, and fell into disorder, and broke the wheels of the chariots, which increased the confusion, and hindered their flight, so that the flood returned, and, as Moses says, overwhelmed the chariots and the horsemen, Exod. xiv. 23,—28. xv. 4. Here then, we have a considerable body of cavalry, in which, indeed, it would seem, that even already the strength of the Egyptian army principally consisted ; and we have also war-chariots, but whether armed with scythes or not, I cannot say, for Moses does not inform us.—Besides this, Moses regarded the horse as so completely naturalized in Egypt, that he was afraid * lest any future king of Israel might, with a view to the breeding of horses, seek to conquer the land of Goshen, and carry part of the Israelites back thither. This really looks as if Egypt had then been considered as the natural country of horses, and Palestine, as unfit for rearing them ; for without being impressed with such an erroneous notion, no king of Israel was likely to enter-

* See Deut. xvii. 16. and my Dissertation, *De Legibus Mosis Palestinam populo charam facturis*, § 9.

tain the wish which Moses endeavoured to guard him against. In fact, we do not seldom err, in accounting many things in a country the work of nature—invariable nature—which are only the effect of accident; especially in horsebreeding, where so much depends on the proper management of studs.

I. 12. From what has been said, the splendid description of the horse, and, properly speaking, the war-horse, in the xxxixth chapter of Job, ver. 19,—25. acquires an interest altogether new, and appears in a light,—in some measure new also,—which, perhaps, would alone be sufficient to betray the author of that book. Job is placed near Damascus, and about the time when the Israelites sojourned in Egypt. The country round Damascus, or rather *all* Arabia, at this period, was still destitute of horses; and the writer, who is even to the extreme scrupulosity of our times, careful to admit nothing into his moral fiction, that could be charged with geographical or historical improbability, is enough of a connoisseur not to mention horses among the riches of Job. But when he introduces God as speaking, and means to describe the wonders of creation, foreign animals, and indeed those of more southern countries, such as the elephant and the crocodile, make their appearance; and this is quite according to the propriety of the fiction; for God will be allowed to be acquainted with the animals of the whole earth; and throughout the book, Job speaks like a man of such extensive knowledge, that he would understand what God might say to him concerning foreign animals. Besides, the wonders of foreign and distant countries are wont to make more impression

than things equally wonderful, that are daily before our eyes ; and with the more propriety, therefore, are they here introduced. Now, in the address of God to Job, we meet with a description of the horse. It could hardly, therefore, be an Arabian or Damascene animal ; but it might, as well as the elephant and crocodile, belong to a more southern country. This description is so fine, that it has never yet (which is saying a great deal) been disfigured by any translation ; and many a man who never read it in the original, has admired it as a piece of poetry. To save the reader the trouble of a tedious search, I subjoin my version of the passage ; and those who chuse to read my remarks, may consult my German Bible.

Hast thou given mettle to the horse ?

And clothed his neck with ire ?

Dost thou command him to spring like a grasshopper ?

The grandeur of his neighing is terror :

With his feet he beats the ground,

Rejoicing in his strength ;

And goes forth to meet the embattled foe.

The fearful sight he scorns, and trembles not,

Nor from the sword doth he draw back.

Above him rattle the quiver, the glittering spear,
and armour ;

Under him trembles the earth ; yet he hardly touches it ;

He doubts if it be the sound of the trumpet he hears,

But when it becomes more distinct, then he exults,

And from afar pants for the battle,
The word of command, and the war-cry.

This description is so accurate, and, as a piece of painting, so exquisite, that we may be certain its author was well acquainted with the horse. We are even impelled to suppose, that he must himself have sat on horseback, and even rode on a war-horse; for a distant spectator would not have remarked all these particulars. I have myself, perhaps, rode more than many, whom their fate has made authors, and illustrators of the Bible; but one part of the description, viz. the behaviour of the horse, on the attack of the hostile army, I only understand rightly from what old officers have related to me;—and as to the proper meaning of the two lines,

Hast thou clothed his neck with ire?
and,
The grandeur of his neighing is terror;

it had escaped me; indeed the latter I had not understood, until a person who had had an opportunity of seeing several stallions together, instructed me; and then I recollected that in my 18th year, I had seen their bristled-up necks, and heard their fierce cries, when rushing to attack each other. Nor could the author have copied this painting of the horse from another poet, in the same way as the poets of love and wine often copy from each other, and in so doing commonly betray themselves by some blunder or misconception. This inimitable description, which after several thousand years still continues admired, and bids

defiance even to the malice of criticism, is precisely what we should have expected from a *Kleist*, who had not merely witnessed reviews, but who had actually been engaged in battles. And if we combine the two considerations, that at Damascus, where the scene of this poem is laid, the horse was yet a foreign animal, and that the most ancient horse-breeding, of which we have any knowledge, was carried on in Egypt, where the horse was principally used in war; we shall scarcely be able to repress the sentiment, which on many other occasions, indeed, is ever obtruding itself, *Was not Moses, who knew Egypt as well as Arabia, the author of the book of Job?* In the course of his education in the Egyptian court, he could not have omitted to ride the war-horse; and some have thought that he made campaigns*. And notwithstanding all the objections I have made against Josephus' account of this circumstance†, I must still admit, that the description in question, appears to me to betray a poet of that profession. I would not so judge of a modern poet, who has it in his power to copy and steal from others; but a poet of the very earliest times, who seems so entirely original, and who has not, in a painting on so

F f 3

* See Joseph. Antiq. ii. 10, 2. Mr. Forster, in his Letters to me, which were published in 1772, during his voyage to the southern hemisphere, under the title, *Joannis Reinholdi Forster Epistolæ ad J. D. Michaelis*, makes it probable that Moses served in several campaigns under Sesostriis, within whose time his first 80 years fall.

† See my *Spicileg. Geog. Hebr. Ext.* p. 179. and Art. LXVI. of the present work.

peculiar a subject, one superfluous stroke, must *once*, at least, have fought in battle on horseback.

I. 13. I now add some farther remarks, which occur to me with regard to Egypt, the earliest country of horse-breeding, with which history makes us acquainted.

From what has been already said, it seems to follow, that Africa was at a very early period a land of horses, even at the time when in the contiguous parts of Asia none were bred. I do not here directly name Egypt; for this early-cultivated and flourishing country may very probably have originally had them from some other African region. In fact, I do not look upon it as a natural country of horses; but am of opinion that they were only naturalized and domesticated in it. The annual overflow of the Nile must have always driven wild horses for a time into the barren deserts, where of course they would become a prey to the ravenous beasts driven thither in like manner; so that their race, unprotected by man, could not have subsisted ten years. It has, moreover, been long ago remarked, that Egypt possesses no great variety of native quadrupeds; the reason of which easily appears from what has been already said; so that we should hardly be disposed to make the horse, to which so many other countries were strangers, a natural wild inhabitant there; but rather to conclude, that the Egyptians had received him from some of the other African nations, and adopted and cherished him with that wise policy, for which the age of the Pharaohs is so justly celebrated, and puts to shame the policy of modern states, wherein we find

but few of those noble establishments, whose ruins future ages shall behold with admiration. We can conceive few other countries, to whose security cavalry can contribute so much, and, indeed, is so indispensable, as the flat and widely-extended country of Egypt. Without them, it would become an easy prey to any enemy that should invade it with a strong body of cavalry; in so far, at least, as that he might plunder and waste it, if he could not attempt the conquest of its fortified cities. It has this disadvantage in common with every flat country; but with this unpleasant addition, that in the long stretch of 168 leagues, from Cairo up to Assouan, narrow as it is, it could nowhere oppose light cavalry with infantry; in other words, it could not oppose them at all, but with a force of the same description. But were it, on the contrary, superior in cavalry, it would be pretty secure against foreign enemies, and still more so at a time when the neighbouring nations of Asia had no cavalry; for a people invading it with infantry alone, could, on its extensive plains, have hardly stood against its cavalry, and its then still more formidable war-chariots. And what renders these chariots formidable is this: that, being impelled straight forward by the charioteer, they charge with much more power and effect than the mere trooper can; and thus overwhelm the infantry opposed to them, if not secured by the advantage of the ground. At present, they could inspire no terror, because the invention of gunpowder has rendered them useless; for cannon-balls would soon silence them at a distance: although before that discovery, they could not but be terrific on

a plain. If Egypt, therefore, had a strong body of horse, and a sufficient number of war-chariots, while the neighbouring nations of *Asia* had neither, it was secure: for on the *African* side, it was sufficiently protected by deserts, not traversible but by a march of many days, and through which, a great army, at least a great force in cavalry, could scarcely have penetrated; and towards the north, along the shore of the Mediterranean, by the nature of its coast, which was altogether peculiar, in the circumstance of its having no safe harbour, but only the dangerous *Bogas*, and various creeks. Of this circumstance I have repeatedly taken notice in the Notes to my Latin translation of *Abulfeda's Egypt*, particularly in Note 265th, as also 237th, and 248th. Only we must still observe, that before the time of Alexander, in the place where he built Alexandria, there was no trading town, nor any Pharos to direct strangers along the dangerous coast*; and although Nature had there formed a haven, they could not avail themselves of her bounty, for a fort was expressly erected to prevent their landing.

I. 14. My object in this essay, does not lead me to comment on the Greek authors, but only on those documents of the earliest ages of the world, which are, some of them at least, so ancient, that the oldest Greek authors are, comparatively speaking, but modern, and of which the composers were born or lived in the countries whereof they wrote. I cannot, however, overlook the well-known passage concerning

* See *Abulfeda*, p. 7. and Note 70th.

Egyptian horses in Homer's *Iliad*, b. ix. v. 383, 384 *, more especially as I shall, perhaps, have occasion to advert to it in speaking of the establishment of the Israelitish cavalry by Solomon. I take it, however, in conjunction with the remark which *Diodorus Siculus* makes upon it, in b. i. § 45. Homer is speaking of Thebes in Egypt, *Θηβαι Αιγυπτιαι*, whose magnificent ruins at present bear the name of *Oksor*, or *Loxoreint* †, and says,

‘Αι δ’ ἑκατομυλῶν εἰσι, δὴ κοσμοὶ δ’ ἂν ἑκάστην,
 Ἄνερες ἐξοιχνεύσι συν ἵπποισιν καὶ ὄχεσφιν ;

that is, *where there are 100 gates, and out of each march 200 men with horses and chariots*. Some have hence most extravagantly represented Thebes alone, or at any rate, Egypt, as having 20,000 war-chariots ; which appears very strange indeed, and cannot but greatly recommend Moses, who mentions but 600, as an author of high veracity compared to Homer, who, in contradiction to what has on *other* occasions been remarked of him, must, in his account of *this* matter, be considered as too much of a poet,—a poet whose

* This is the passage, the strange misinterpretations of which, though with additional exaggerations, Voltaire has so bitterly ridiculed in his *Defence de mon Oncle*, p. 31, 32. And no doubt those, whether ancients or moderns, well deserve all his ridicule, who can believe that the city of Thebes had 100 gates, out of each of which went 200 chariots, and 10,000 soldiers. I have always thought *Rolin* such a wretched writer of history, that he ought to be laughed out of the hands of his readers. But the venerable *Homer* will remain free of all reproach ; and I must here do Voltaire the justice to remark, that he does not once mention *him*.

† See *Abulfeda*, p. 19. and Note, 176—178.

exaggerations are incredible and ridiculous. Six hundred war-chariots seem quite sufficient for the purpose for which such machines were employed, viz. to break through infantry ; considering that *Quintus Curtius* (lib. iv. c. 12. § 6, 10, 12.) mentions only 150 in his account of the battle of Arbela. Twenty thousand could never come into action. Let us only figure the extent of space which they would occupy, and which, moreover, must be quite level ; for the least ascent, if so steep as to overset a chariot, or the impediment of a morass, or even a single trench of any depth, stopt them in an instant. Add to this, that they cannot, like infantry and cavalry, act in successive divisions, but must form one body ; for where would be the use of either the second, or the third division, if the first had succeeded in its object ? and, on the other hand, if the horses of the first division should happen to be killed by the spears or missile weapons of the enemy, the chariots themselves stand in the way of the succeeding divisions, and, in fact, form a barricado against their attack.—I observe, moreover, that an author *, whom I am just beginning to read,

* Father *Gabriel Fabricy*, in his *Recherches sur l'Epoque de l'Equitation et de l'Usage des Chars equestres chez les Anciens, ou l'on montre l'incertitude des premiers temps historiques des peuples, relativement à cette date.*—*A Marseilles et Rome*, 1764. One of my hearers, who is better acquainted with our university-library than I am, brought me to the knowledge of this book, when I happened to mention that I was writing on this subject. I find *Fabricy* and I are agreed in one great point, viz. that the Grecian accounts of the earliest times are very little to be depended on, and that the Biblical history, as more nearly or entirely contemporary with them, is alone deserving of belief. On other points, our opinions are frequently at variance. Thus, he

places these 20,000 chariots in the reign of *Busiris*, who lived before *Sesostris*, because Diodorus, in the history of the former, speaks of this passage of Homer. But this appears to me an unwarrantable conclusion. Diodorus says, *Busiris* built *Thebes*, adding Homer's description of the city, and explaining it; but it does not follow, that in the time of its original founder, it was all that it became afterwards. Homer describes it as it was in his own time, not as it was at first.—Now for the passage itself.

It appears then to me, that Homer means neither the gates of the city, nor, as Diodorus thinks, the gates of temples, but those gates whence issue horses and riders, 200 from each, that is, the gates of stables. At *Thebes*, therefore, the Egyptian cavalry, and perhaps likewise, their war-chariots, had been stationed, for which 100 large and magnificent stables were built within the city, in each of which 200 horses stood; and these went out at the gates of the stables. To understand their whole amount, viz. 20,000, of chariots only, is to make Homer, contrary to what he himself means and says, guilty of an improbable fiction; and if we explain *οχηα* even by *chariots*,

is doubtful whether riding, or using the horse for draught, be the earlier practice, but seems more inclined to maintain the priority of the latter; and while he coincides with me in thinking that *אמ* means not *mules*, he disputes, without knowing the right reasons of it, the explanation, *warm baths*, which I have adopted, and follows *Bochart*, who reads *אמית*, and makes it the name of a people discovered by *Ana*, while feeding the asses in the desert.—*Fabricy* is a man of learning, well versed in the Oriental languages, and his work, hitherto but little known in Germany, is well worth perusal.

then were there 20,000 men with horses and chariots, that is, part of them were riders, and part charioteers. The proportion of the one compared with the other, did not probably reach to one in ten ; at least in the battle of Arbela, Q. Curtius, as above stated, mentions 150 chariots, and 45,000 cavalry-soldiers. But it is by no means certain, that $\alpha\chi\alpha$ should here be rendered *chariots*. Some understand by it *stallions*, and $\alpha\chi\iota\sigma\upsilon$ signifies both. To this latter interpretation, I should be disposed to give the preference ; so that 20,000 cavalry were stationed in Thebes. And this is exactly according to the nature of the Egyptian military system ; for the military force of that country was not distributed in small corps, like regiments or legions, all over the kingdom, but collected in large bodies, in a few cities built for that purpose. Moses' account of the sudden pursuit of the Israelites with a powerful body of cavalry, and 600 chariots, seems to presuppose, that this force did not require to be assembled from different parts of Egypt, but was then all together in one of the cities, I suppose Memphis *. In this view of the matter, Homer, who, on all other occasions, paints so correctly according to historic truth, here also only says what is altogether consistent with probability, and conformable to the Egyptian regulations ; and I am astonished that his translators have not done him the justice to explain him on this

* The name *Medinat-Fars*, which the ruins of *Arsinoe* now bear, should, perhaps, be understood to mean, not the *city of Persians*, but the *city of horses* ; and this *Arsinoe*, not far from *Fium*, may probably have been the place where the Egyptian cavalry were stationed.—See Note 233. to Abulfeda.

principle; not even *Pope* himself, who in his Note on this passage, does nothing more than quote the words of Diodorus.

Indeed the explanation given by Diodorus, approaches pretty nearly to that now offered—with this difference, however, that,

1. He makes the hundred gates to mean, in round numbers, *a multitude of large courts of temples*, (πολλὰ καὶ μεγάλα προπύλαια τῶν ἱερῶν) which might indeed afford egress to the priests, but as they have in fact no reference whatever to horses, are not, as Homer terms them, *gates, that give egress to 200 horsemen each*. And yet,

2. He immediately afterwards takes the number 100, expressly in the sense of 100 stables, of which there is nothing in Homer, if *courts of temples* are meant.

3. These stables, or *mews*, he places not in Thebes itself, but along the Nile, between Thebes and Memphis, so that we cannot perceive what connection they have with Thebes. And this is, at the same time, contrary to what he himself states concerning the Egyptian mode of disposing their forces, which was not in separate detachments, but in large bodies together.

Probably the source of the mistake lies in this, that a judgment of the Egyptian military establishments has been formed from the practice in other countries, where 20,000 cavalry in one city, would, no doubt, appear somewhat incredible.

4. And if we follow the common Latin translation of Diodorus (which until Wesseling's edition, has not

only always remained unaltered, but also without the fault being noticed) *Viginti tamen curruum millia reuera inde ad bella exire* ; Diodorus does actually state the gross absurdity of the Egyptians having had 20,000 war-chariots. Here, however, Diodorus is really blameless ; for *αρματα*, as has been long ago remarked, means *horses* as well as *chariots*, and we must not needlessly impute nonsense to an author. It is only a proof how much the best editors of the Greek classics have yet left undone ; and hence I heartily regret, that Klopstock, in his *Landtag der Deutschen in der guten Meinung*, let happen what will to the Greek and Latin authors, should have abolished the class of scholiasts. He should, methinks, have at any rate first chastised them, because they have performed so little, and left such an immense deal for others to accomplish.

It appears to me that Diodorus does not properly give his own opinion, but that of others, without duly understanding them, and that he has jumbled several discordant opinions together. That the reader may judge for himself, I annex his own words, with what I conceive a just translation.

Ενιοι δε Φασιν, ου πυλας εκατον
εσχηκεναι την πολιν, αλλα πολ-
λα και μεγαλα προπυλαια των
ιερων, αφ'ων εκατομυυλον ανο-
μασθαι, καθαπερει πολυπυλον.
Δισμυρια δ'αρματα προς αλη-
θειας εξ αυτης εις τες πολεμους
εκπορευεσθαι· τες γαρ ιππωνας
εκατον γεγονεναι, κατα την πα-

But some say that the city
had not had 100 gates, but
only numerous temples,
with large courts before
them, and was thence na-
med the city with 100
gates, that is, with many
gates ; but that 20,000
horses did actually go out

ραποταμίαν, την απο Μιμφως
αχρι Θηβων Αιγυπτου των κα-
τα την Λιβυην, εκασθ δεχομεν
ανα διακοσις ιππεος, ων επι
νυν τα Σ-μελια δεκνυθαι.

of it to the field ; for
on the Libyan (*western*)
bank of the Nile, between
Memphis and Thebes,
there were 100 stables,
each containing 200 hor-
ses, the foundations of
which are still to be seen.

SECOND PERIOD.

II. 1. I now come to a *second period*, which extends from the time of Moses to the death of David.

Moses himself expected that the Israelites would have to encounter cavalry, and prepared them for it in two ways. In the *first* place, he admonished them not to be afraid of their enemies, although they should see them approach with numerous cavalry and chariots, but to put their trust in the assistance of God, Deut. xx. 1,—4. We cannot call this a law, and therefore I say nothing of it in this work on the Mosaic laws : for our passions are not in our own power, nor can a man be enjoined with propriety either to fear, or not to fear ; but then it was a very rational admonition, and so it would always be in the mouth of the founder of a state in a mountainous country, even though not divinely commissioned. Experience has ever shewn, that a brave, close, and steady infantry will withstand cavalry, even on a plain ; (the battle of Molwitz, and some of the Russian victories over the Turks, furnish very recent instances), and that the danger of war-chariots, which cannot be always turned at will, may, in various ways, be avoided ; as by making room for

them to pass harmless through, which was done by Alexander, in the battle of Arbela, or by taking up such a position as to render them useless, &c. The Israelites, therefore, might certainly have ventured to meet cavalry in such a mountainous country as Palestine, and their avoiding the plains for fear of them, was construed into cowardice. Moses commanded them to confide in God's protection, of which *he* might, as a divine messenger, assure them; but that does not imply, that he may not also have learned in Egypt the weakness and inferiority of cavalry, when opposed to steady infantry. God does not always work miracles, but acts also by natural means.

II. 2. In the *second* place, Moses commanded them to hough, as is still done in action, the enemy's horses which they might take, when they could not bring them off; because this, if it did not kill, would at least render them quite unserviceable. Of this I have said more in Art. LXIV. of this work, which I beg may be consulted in the second edition, because in the first I committed a mistake. This command presupposes that the Israelites had no cavalry, and did not use horses either for agriculture or travelling; so that to them they would have proved but a useless sort of plunder, and might have again got into their enemies' hands: and it also looks as given by one, who not only knew the horse as a rider, but also as a warrior; or, at least, knew the most expeditious method of disposing of captured horses, that could not be kept. Joshua obeyed it, and so likewise, with one exception of 100 horses, did David.

II. 3. Indeed, in Joshua's first campaign, when he conquered the southern part of Palestine, we find no

mention of horses ; and in two passages this silence is particularly striking, and almost amounts to a decisive proof of the non-existence of horses in that country. In Jericho every living creature was devoted to God and put to death, Josh. vi. 21. and we find men, women, oxen, sheep, goats, and asses, enumerated ; but no horses.—In Josh. ix. the Gibeonitish ambassadors, while they gave out that they came from a very distant country, had, nevertheless, only asses with them. Of the horse, which to people from a northern region, had, perhaps, been more suitable, they were either ignorant, or else they could not at once press horses to carry them : they wished, however, to appear as the inhabitants of a very remote country, and it must have been one farther *north* than Palestine, because without inspiration Joshua could not but know, that to the south of it, there was only Egypt, and a part of Arabia, sufficiently known.

II. 4. The case, however, was very different, when Joshua began to attack the northern Canaanites. The confederate kingdoms, under the *sway* of the sovereign of Hazor, brought against him a great force of cavalry and chariots : and now we meet with a repetition of the divine commandment to hough the captured horses, Josh. xi. 4, 6, 9.—Thus, in the part of Palestine most contiguous to Egypt, Joshua found *no* horses, but in the northern part, we here see, that they were *numerous*. Of course, they could hardly have come from Egypt, but from some other country more northerly than Palestine itself, with which we shall be better acquainted in the sequel, Armenia, for instance. This almost looks as if it then had been a

part of Egyptian policy, not to permit the exportation of horses, nor to afford their Asiatic neighbours any facility in obtaining those warlike animals, on which the power and security of Egypt so much depended. To forego even great *advantages*, in order to promote the *security* of the country, was a prominent feature in the policy of the Egyptians. Even to commerce, for which Egypt is so favourably situated, they gave, in the time of the Pharaohs, no patronage. Instead of making use of the harbour at Alexandria, the only one they had, they guarded it with a castle and a garrison, to prevent others from using it, and to be the more secure against an attack from the sea-side; which, by reason of the shallows, and the want of good harbours all along the mouths of the Nile, occasioned by its annual efflux, strangers could not have attempted without great danger, but at Alexandria. In like manner, their policy, rather than arm their Asiatic neighbours with the best means of attacking them to advantage within their own level country, spurned the profits, however great, which the exportation of horses would have gained them; just as England at present, however much it might enrich her to do otherwise, takes care to afford France no means of putting its navy in a formidable state.

II. 5. Soon after the death of Joshua we find iron chariots in the *southern* parts of Palestine. The tribe of Judah could not subdue the people of the *valleys*, that is, of the flat country along the coast, because their iron chariots were too formidable, Judg. i. 19. These people, therefore, had either by this time learnt from their northern neighbours the advantages of cavalry and war-chariots, or else we must here make a distinction

between the Canaanites and the Philistines, and suppose the latter, as an Egyptian colony, to have had horses, though the former had none. And, indeed, this to me, seems the more probable inference, because the flat parts of south Palestine were inhabited by the Philistines, and also because afterwards we find cavalry and chariots among them in 1 Sam. xiii. 5. and 2 Sam. i. 6. On the former of these passages, I have some observations to offer respecting the numbers, as stated in the Hebrew text, which the reader will find in the note subjoined*.

G g 2

* According to the common reading, the Philistines had שלשים אלף רכב ושש אלפים פרשים, which is commonly translated *thirty thousand chariots, and six thousand horsemen*; although it presents a most manifest absurdity, and that not only with respect to the incredible number of the chariots, 200 times as many as Darius had at Arbela, and which could never come into action, but with respect also to the proportion of the horsemen to the chariots, one to five, which is quite preposterous.

The various readings of the numbers give us but little assistance. Josephus, with a view to round, in some measure, the historical hyperbole, adds a cypher to the number of horsemen, and makes them 60,000; (Antiq. vi. 6. 1.) but the proportion still continues awkward, and the 30,000 chariots still remain incredible.

The Syriac and Arabic versions take a cypher from the chariots, and make them 3000, as if the Hebrew text had שלש; and this Bochart (Hierozoic. I. II 9. p. 156) and Houbigant account the true reading. Yet it really is not a hair better than the preceding: for even 3000 chariots, in a Philistine army, considering that Darius at the battle of Arbela, had not as many hundreds, is a monstrous number, and could, perhaps, as little come into action as 30,000. The country of the Philistines is only a small plain along the coast, immediately behind which we find rising grounds and mountains: so that if Saul had but retreated a little way, not so far as into the mountains, but only to the place where the valleys become narrower,

II. 6. In the time of the judges, the northern part of Palestine is again celebrated for its cavalry

they would soon have found their chariots altogether useless. What Bochart adds, to help out his opinion, namely, that probably the baggage waggons were included in the number, is extremely improbable: for who would ever have added *them* to the number of the war-chariots, in stating the strength of an army? And if Bochart chose to take such a liberty in one instance, he might, by the very same rule, have equally defended the number 30,000. The reading, besides, merits the less consideration, as it has only one single authority to support it, the Syriac version, and there it is perhaps not a true variation of the Hebrew text, but only a conjecture of the translator, or of some transcriber, who thought 30,000 too great a number, and therefore wrote 3000 instead of it.—The Arabic version is of no account whatever, having been made, not from the Hebrew original but, in the book of Judges, from the Syriac; so that I am correct in affirming, that the reading rests on the testimony of a single witness, who had, perhaps, not so read, but only so conjectured. In fact, 3000 and 30 000, in Hebrew, are not quite so similar as we should, at first view, imagine: for it is not merely with שלש *three*, and שלשים *thirty*, that we are there concerned, but in the text we have שלשים אלף for *thirty thousand*, whereas for *three thousand*, the correct expression would have been שלשת אלפים. And hence I give *Le Clerc* credit for his dissatisfaction with this amendment of the text, although he did not notice every thing that could be said against it.

If I might hazard a conjecture to improve the reading, it would be the omission of אלף, which reduces the chariots to 30, and so makes this proportion to the 6000 horsemen, much the same as that of the 150 chariots and 45,000 cavalry, at the battle of Arbela. And in a country where mountains rise immediately on the entrance of the Israelitish territory, from that of the Philistines, 30 chariots were quite sufficient.

Those who are averse from any alteration of the text, I would beg to consider at leisure, whether a different translation may not be thus given of the common reading. רכב signifies not only *chariots*, but also *horses*. (See my *Historia Belli Nesibeni*, p. 80, Note *.) Bochart

and war-chariots. In chap. iv. we find the Israelites engaged in a new war with the king of Habor, who brings 900 iron chariots, and a strong body of cavalry, into the field against them. And in the history of the war itself, as well as in Deborah's song of triumph, horses and chariots are repeatedly mentioned. Judg. iv. 3, 7, 13, 15, 16. v. 6, 7*, 22, 28.

G g 3

himself has made some remarks on this use of the word, in his *Hiero-zoicon*, p. I. l. ii. c. 6. § 4. p. 99, 100. What then, if we should render, *Thirty thousand horses and six thousand horsemen*? Horses are more exposed in action than their riders: they are somewhat in advance, and cover a good part of the rider's body; and officers, at least, study so to break them, as to cause them rear a little, by which means they are themselves still farther protected from many strokes and shot which light on their horses. The consequence is, that in battle there are more horses killed or wounded, than horsemen; and, on this account, those who have it in their power (as commanders and officers) take care to keep led horses in readiness in the rear. Now, may not the Philistines have introduced this practice among their whole cavalry, which was probably composed of persons of rank and fortune, and have taken to the field five horses for each individual? It is obvious, in that case, that every one must have also taken with him a servant to attend them, just as our officers do at present, and as the knights of former days did; and that they considered five horses as requisite not just for one engagement, but for a whole campaign.

* In reading my translation of Judg. v. 10. *Ye that ride in chariots*, the thought will naturally occur, that the Israelites, who are there spoken of, must also have had horses. I must, therefore, observe, 1. That, in rendering the very obscure word מִדִּין, from my uncertainty as to its meaning, I followed the Seventy, who have ἐν λαμπρῶν, *in costly chariots*, because of all the explanations hitherto given, this is the only one that suits the context; 2. That chariots do not necessarily presuppose horses, but may be drawn by oxen,

During the government of the judges, the horse did not come into use among the Israelites; for we never find them on horseback in battle, not even when contending with cavalry; and for riding, even in the most magnificent style, they employed the ass. In the song of Deborah, when the condition of the different classes of the people, from the man of fortune to the poor foot-traveller are enumerated, *those who ride on spotted asses*, hold the first place; (Judg. v. 10.) and as a proof of the opulence and domestic prosperity of two of the judges, we are told that all their sons, and even grandsons, rode each on an ass of his own, Judg. x. 4. xii. 24.

Even when Saul was nominated king, the horse was certainly not introduced among the citizens, who satisfied themselves, the rich not excepted, with the ass. Saul himself was elevated to the regal dignity, whilst in search of his father's asses; and, among the other particulars which Samuel stated to the people, to shew them what rights the king, whom they so much

asses, or mules. See *Bochart*, I. 11, 19. p. 228. 229.—In fact, however, I do not believe that מִרְיָן were chariots; but rather conceive them to have been *chairs*, or some such thing in which people were carried, and which might have fitly obtained their name from the Arabic מִיר *ayitata est res*. Even in southern countries, artless as the people are in other respects, we see persons of condition carried by slaves.—This explanation, however, had too much novelty and uncertainty for me to venture on adopting it in a German version of the Bible; indeed, I could not rightly decide on the proper word to be used. *S'nfte* (chairs, sedans) seemed too modern: though they may *then* have had chairs, as *now* in Italy, drawn by asses. *Canot* (Counes?) would perhaps have been more correct: but it is so outlandish, that to most readers it would have been unintelligible.

desired, would exercise over them, we find this ; *Your servants, maidens, youths, and asses, he will take and employ for his own purposes*, 1 Sam. viii. 16*.—At this time, however, it appears, that the neighbouring kings had horses, and the Israelites were taught to expect that their king would have them also. *He will* (says Samuel) *use your sons for his chariots*. This indeed is not decisive, as they might be drawn by asses, but it follows, *and for horsemen also*. At least, therefore, there must have been a corps of horse-guards for the protection of their persons, instituted by some of the neighbouring kings, from whose customs Samuel drew the representation of royal rights, which he laid before the Israelites, to deter them from insisting on a king. Whether Saul verified the representation in this point, or remained contented with his paternal asses, I cannot tell ; but we hear nothing more of horses during his reign.

II. 7. It was David's fortune to contend with enemies powerful in cavalry. His most formidable opponent, called, in the Hebrew, the king of *Aram-Zoba*, brought so many horse into the field, that David, after a victory over him, actually made prisoners of a whole army consisting of 20,000 infantry, and 7000 cavalry,

G g 4

* I am here somewhat doubtful, as to the textual reading חמוריים, *your asses*. Might it not originally have been חמוריים, *your valuables* ? Samuel tells the new king, that every thing *valuable in Israel*, חמורת ישראל, should in future belong to him, 1 Sam. ix. 20.—I do not stand up for this new reading, but deem it my duty honestly to point out any objection that occurs to me against even my own doctrine in this essay.

together with 1000 war-chariots*. How this was possible without cavalry—probably by cutting them off from the Euphrates—I will endeavour to explain, in the notes to 2 Sam. xviii. in my German version. We find this same king still powerful in cavalry during a second war†. But who is he? I think, a king of Nesibis, a city of Mesopotamia, situated at the bottom of the Armenian mountains, and in Syriac, actually called *Zaubo*, and in Chaldee, *Zoba*. The reasons of this opinion I have stated in my Dissertation, *De Syria Sobæa, quam Davides sub jugum misit, Nesibi et circumjecto tractu*; on which, however, I must here make the following alterations and additions. I had there controverted the assertion of Josephus, that *Sophene* is a part of Armenia; and I still in so far abide by my opinion, that *Zoba* is not *Sophene*; but although he is wrong in identifying these two places, from the similarity of their names, yet in the main point he contradicts me less than I supposed; for a king of Nesibis might also have been king of Armenia. Nesibis lies at the foot of the Armenian mountains; and, in later times, it is certain that the kings of Armenia did reside there, until Abgarus removed to Edessa;—that Abgarus, who, by his treachery, misled Crassus, to make an imprudent march, which lost him the great battle of Carrhæ against the Parthians‡. In David's time, therefore, Nesibis might have been the residence of the Armenian sovereign.—Nor is the

* See my *Historia Belli Nesibeni*, § 10.

† *Hist. Bell. Nesib.* § 17.

‡ See *Mosis Chorenensis Historia Armeniaca*, p. 128.

name אֲרָם, Aram, repugnant to Armenia: for though it is commonly the name of the *Arameans*, yet that the Armenians did likewise sometimes bear it, and how this came to pass, I will shew in the Second Part of my *Spicilegium Geogr. ext. Hebræorum*, on Gen. x. 22; and at present only observe, *en passant*, that among their original progenitors, the Armenians reckon an *Aram**. But were there nothing in all this, still the king of the Aramean city Nesibis might also have ruled over Armenia. So that I am no longer at variance with Josephus.—Now, if this most powerful adversary of David was king of Armenia, we can more easily conceive how it happened, that David here for the first time beheld such a strong force of cavalry opposed to him: for Armenia is renowned for its breed of horses; and even in Ezekiel's time the Tyrians had their horses from it†. So that, in ancient times, Armenia was, like Egypt in the south, an aboriginal country of horses in the north, while yet many intermediate nations had no breed of their own, but received their horses either from Egypt or Armenia. Probably the horses of the northern Canaanites, mentioned above, may have been of this Armenian breed.

II. 8. With the captured horses David dealt according to the Mosaic injunction; causing them all to be houghed, (2 Sam. viii. 4.) except an hundred, which he seems to have reserved for his mounted life-guard, and perhaps his chariots. Hence it appears manifest, that he neither yet had, nor meant to establish a

* See *Mosis Chor.* p. 12, 13, 35, 36, 37.

† Ezek. xxvii. 14, *Spicilig. Geogr. ext. Hebræorum*, p. 77.

cavalry-force, else 7000 trained Armenian horses would have been a very valuable acquisition. Indeed, his victory would show him what infantry can do against cavalry, and that, for an Israelitish monarch, the latter were not indispensably necessary. We may also conclude, that, in Palestine, the horse was not then employed in agriculture, nor yet very often for travelling. When David fled from Absalom, asses were used for conveying away his family : he himself marching on foot like a soldier*. And in the battle in which Absalom was slain, we find him riding on a mule, 2 Sam. xviii. 9.

II. 9. What we find in the Psalms of David, on the subject of horses, corresponds with the circumstances related in the history. They invariably represent

* 2 Sam. xvi. 2. *Bochart* in his *Hierozycon*, P. I. l. 2. c. 13. § 6. p. 189. has an observation on this passage, which I must not here overlook. In order to have an opportunity of making it, he gives the preference to the *Ketib*, וְלִהְיוֹת, which he translates, *and to fight*; conceiving the asses were sent to David to use in battle; in support of which opinion, he adduces passages of ancient writers, where mention is made of fighting on ass-back. There is no doubt, that in some ancient nations this was the case, and I shall have occasion to say more concerning it in the sequel. But, in the present instance, *Bochart* has improperly applied the fact. *Two asses*—and no more are here mentioned—were certainly too few for such a purpose, more especially when the royal household were to ride on them: and asses can only be used in fighting, when the enemy has either no horses at all, or else such as are unacquainted with asses; for if not, a squadron of ass-riders would, in a moment, be rode down by the charge of a squadron of horse.—What *Bochart* has here improperly introduced, would have better suited the illustration of *Isaiah* xvi. 7. which relates to the first campaigns of *Cyrus*.

the horse as used by the enemies of the Israelites, yet still insufficient to render them victorious over a people protected by God; thus in Psal. xx. 8. *They boast of their horses and chariots; but we glory in Jehovah our God: They crouch and fall; we stand.*—Psal. xxxiii. 17. *The horse deceives those who hope for victory from him, and his great strength avails them nought; There the eyes of Jehovah behold them, that fear him.*—Psal. lxxvi. 7. *Before thy menace, thou God of Jacob, rider and horse sink into the sleep of death.*—Psal. cxlvii. 10. (our ill-applied grace, to which children learn very successfully to affix no ideas whatever), *He delighteth not in the mettle of the horse; in the legs (that is, in the large strong bones) of the men he has no pleasure; but in those who fear him and hope in his grace; that is, he gives the victory not to those that have powerful cavalry, but to those who put their trust in him.*—Hymns like these had the farther effect of accustoming the people to a contempt of horses, which was thus of such moment to the insurance of their victories. In some passages of the Psalms, however, we find no notice taken of the horse, where *our* poets would certainly have introduced him. Thus, in the viiiith Psalm, where man is celebrated as the lord of the creatures, by divine appointment, no German poet would have omitted noticing the noblest of all the animals, that are serviceable to mankind; and in an imitation of this Psalm, which I once attempted, and which is subjoined to my German version of the Psalms, as an appendix, I actually committed, without at first thinking of my unfaithful-

ness to the original, the offence (surely not unpardonable) of giving him a place at their head.

Du setzest ihn zum Herrn in deinem Eigenthum.
 Dem ihm verwandten Volk der Erden
 Befiehlt dein herrschrisch Wort ihm unterthan zu werden :
 Ihm dient das edle Pferd, und von Natur sonst frey
 Wirds stolz auf Herrendienst, und prangt mit Slavery—

That is,

The creatures, listening to thy Sovereign word,
 Obey man's voice, as their appointed lord ;
 Him serves the generous horse, by nature free,
 Exulting in the pride of slavery.

II. 10. In the time of David, however, the Israelites *did* become better acquainted with horses than before : but it was only as an appendage of royal state. Absalom, ambitious to distinguish himself, as crown prince, above his other brothers, and, at the same time, as the first step to the actual developement of his artfully preconcerted rebellion, *prepared him chariots and horses, and fifty running attendants*, (2 Sam. xv. 1.) the latter as a sort of body guard. This fact shews that the Israelites were beginning to have horses, but that they were very rare ; else would not such a circumstance have been recorded of a prince of the blood royal.

In the same period too it is, that we meet with the first mention of mules, and *that* in such terms, as to indicate, that the Israelites had at this very time first become acquainted with them. In the Seventy, it is true, we find mention of mules in two passages, of much earlier date, where they are ascribed to the Egyptians, but unjustly : for, in the Hebrew, the

usual word for a *she ass* is used, and which they themselves so render in other passages; and nothing but mere caprice could have led them to translate the same word אֶתֶן, *she ass*, or *mule*, according as the beast belonged to the patriarchs or to the Egyptians*. What they have said, therefore, of mules, in their version of the Pentateuch, however coincident with Egyptian learning and ideas, is altogether unfounded, and contrary to the usage of the Hebrew language.— But although *before* David's time mules do not make their appearance in the Biblical history, *from* his time, or more properly speaking, after the first half of his reign, they become all at once very frequent. On the murder of Amnon, 2 Sam. xiii. 29. all the sons of David fled, each mounted *on his own mule*. Absalom's mule which he rode, even in battle, has been already mentioned, 2 Sam. xviii. 9, 10. In 1 Kings

* That אֶתֶן means a *she ass*, is nearly undisputed. The Seventy render it by *ovos* in Gen. xxxii. 15. xlix. 11. But when the king of Egypt gives animals of this name as a present, in Gen. xii. 16. they make them *ἡμῖνοι*; and so likewise in Gen. xlv. 23. when Joseph sends them laden with provisions for his father. It would seem as if they did not choose to let the patriarchs have mules, perhaps because *they* accounted the unnatural union of beasts, that was afterwards prohibited by the Mosaic law, as sinful. The Egyptians, on the other hand, were to have no *she-asses*. Was it, at the era of this translation, unfashionable and disgraceful in Egypt to ride on a *she-ass*? Or what else did this distinction mean? Whatever may have been their idea, to have rendered אֶתֶן, *a mule*, was incorrect, for it never has that meaning. But so very patriarchal did they think *she-asses*, that we find them, in Gen. xxii. 3. rendering even דָּמִי, by *ἡ ὄνος* in the feminine, because Abraham made use of an ass for riding.

i. 33, 35. we see Solomon, by David's orders, mounted on the *king's own mule*, in coming to Gihon to be anointed as successor to the crown. In Psal. xxxii. 9. the mule, which, in early youth, must be confined with a strong curb, furnishes a beautiful moral similitude. As the Israelites even yet had but few horses, and as they were prohibited from coupling animals of different kinds*, they must at this very time have received their mules from a nation in which horses had been long bred. We shall see in the sequel, that in the time of Ezekiel, the Tyrians had mules from Armenia. Now, might not the Israelites in David's time, have had theirs from the same quarter? Perhaps they may have first become acquainted with them, as an article of booty, in the war which David carried on with the king of Nesibis. The name which the mule bears in Hebrew, is extremely singular. It is quite unknown to the other Oriental languages, and admits of no natural derivation from them: although, indeed, the Rabbins have contrived one, according to which the animal looks like a sort of monk†. The name must, of course, be of foreign ori-

* See below Art. CCXX.

† In Syriac and Chaldee the mule is called כודנה, *cudna*; in Arabia, בעל, *bagl*, or *the sluggard*. It appears that the Arabians were first acquainted, not with the good kind of mules, but with the bad kind, engendered between a horse and a she-ass.—The Rabbins will have it, that he derives his name in Hebrew, from his not propagating his kind, and his being single. But although he does not propagate, so insatiable is his lust that he could scarcely have had his name from the circumstance of celibacy. *Bochart*, in his *Hierozycon*, I. p. 231, directly reverses the etymology, and says he is so called,

gin, as we should suppose, and introduced among the Hebrews along with the creature itself, from a foreign nation. It is פָּרָד. The German reader who happens to be ignorant of Hebrew, and whose ear is, of course, unaccustomed to the word, will, if it is not ancient but modern, be astonished, when I represent it to him in German thus, *Ferd*, [the German word for a *horse*.] How this happens, I cannot tell: but this I know, the countries between the Euxine and Caspian seas, are the true *vagina gentium*, elsewhere sought in vain, where a whole multitude of peoples, differing in languages, and sometimes mingling those languages, lived within a narrow circle. Hence probably it is, that in Persia, we find so many more words that are manifestly German, than in any of the European tongues, not immediately derived *from* German. And hence too, we can more easily understand what has been related, of Mithridates having spoken two and twenty languages. Abulfeda, in his geography, mentions a place in the south east of Trebisonde, called the *Mount of Tongues*, which is said to have had its name from the circumstance of so many peoples of different languages having encountered or dwelt upon it.

II. 11. That, in the Psalms of David figurative because his father and mother formed an unnatural conjunction, after separating from their respective natural consorts. Etymological zeal has made a circumstance, otherwise universally known, to be forgotten, namely, that when any foreign animal is introduced into any country, it generally retains its foreign name, for which, therefore, it is needless to seek for an etymology in the language of that country.

expressions appear, taken from the curbing of horses and mules, is a circumstance worth notice, because it shews, how much the Israelites then concerned themselves with the management of these animals, and that they still imported, instead of breeding them. Although one of these expressions (Psal. xxxii. 9. *Be not irrational, like horses and mules, which, while yet young, must be bridled and bitted*) be rather general, it is nevertheless observable, that the poet seems to know, that these foreign animals, which formed part of the usual spoil taken in war, required to be broke when young *, and that he actually names two of the instruments used for that purpose, the bridle and the bit. In regard to the former of these, there is not the smallest doubt: and, as to the latter, should any doubt arise, whether רֶסֶן, (*resen*) which more rarely occurs, really signifies *the bit*, the Arabic language is decisively in favour of *that* signification, which is adopted in the ancient versions of the Seventy and Vulgate†.—And that no one, from a mere etymology,

* If it be asked, why I have here, and in Psal. ciii. 5. translated the word עֵרִי, *youth*, which others render the *mouth*; it is sufficient to answer, that the *bit* was put, not in the mouth, but on the nose, and that in none of the Oriental languages does עֵרִי mean *mouth*; although this meaning has been affixed to it merely from a ludicrous etymology, because עֵרִי may signify *ornament*, and the mouth is the ornament of man. In Arabic the word signifies the *morning*, and thence in Psal. ciii. 5. is used for the *morning of life*, that is, *youth*. In Psal. xxxii. 9. the Syriac version has preceded me in translating it *youth*.—I abstain from farther philological discussion at present, as unsuitable to this work.

† See *Golii Lexicon*, p. 986.

may be tempted to make any fanciful addition to the history of horse-breeding, by maintaining that the *bit* was well known in the time of Nimrod, because, according to Gen. x. 12., a city named *Resen*, was then built, I must remark, that in Arabic, the word admits of many other meanings, from which that city may have received its name. To return :

II. 12. Another passage of the Psalms, (Psal. lxvi. 12.) is much more important to our purpose, although probably from ignorance of horsemanship, it has not been rightly understood. I shall first copy my translation of it, which is as follows ; *Thou hast let us be caught in the snare, hast laid burdens on our backs, and caused men to ride upon us.* This is the image of a people gradually subjected to the yoke, and it is obviously taken from the breaking of horses, and rendering them serviceable for the purpose of riding. But the common version renders the passage extremely awkward ; *Thou hast brought us into the strong-hold, laid a load on our loins, and let men ride on our heads ;* which is a strange combination of figures, precisely according to Horace's description,

————— *Ut nec pes nec caput uni,
Reddatur formæ ;*

and so palpably improper, as scarcely to require any formal confutation, if we but allow David to have been a rational person, and, as such, incapable of any such incongruous composition. Perhaps, however, the reader may wish to know the philological reasons of the signification I have affixed to particular words, in my translation ; and therefore I here subjoin them,

together with an illustration of the passage. The LXX., Vulgate, Chaldee, and Syriac, have rendered (מצודה) *Metzodah* by words equivalent to *snare*; and the two last have even employed terms nearly allied to each other. In Ezek. xii. 13. it certainly has the signification of a *snare*, or *springe*, from (ציד) *Tzud*, to *hunt*. Considering its derivation, however, it means not a snare in general, but one with which animals are caught. Where horses run wild, and people wish to catch them (I take my description of the process from the practice in Hungary, for I never saw it myself), they form barriers, which gradually approach more and more closely to each other, and drive into them a parcel of the animals. A person stands by with a springe, which he throws around the neck of the horse that he wants to take. The other horses, on this, run off affrighted, while the captive, exerting all his strength to escape, is almost choked, so that the foam issues from his mouth, as he pulls back; but he is for the most part brought in safety to the place where he is to be kept, and then he is treated with lenity and kindness.—It therefore appears, that the people from whom the Israelites at this time had their horses, allowed them to run wild, till they had occasion to catch and break them, just as is still the practice in some parts of Hungary, Poland, and the Highlands of Scotland; for in Germany, so far as I know, we have nothing entirely similar to this plan; the horses in the *Senner-heath* being (so to speak) but half wild. This, by the way, will help us bye and bye to illustrate a fact that belongs to the time of Solomon.—The second clause, *Thou hast laid burdens on our*

backs, is to be explained from a practice, not yet long disused, of training a horse to bear the weight of a rider, by putting a bag of sand, or some other hard substance on his back, so as to embrace his girth, to which, when he has been accustomed, the rider mounts himself. The Hebrew phrase, which I have rendered *on our backs*, properly signifies, *on our loins*, which is singular, as still appearing a relic and characteristic of an animal with which the Hebrews were better acquainted than with the horse, viz. the ass, which carries its load, as well as its rider, farther backward, and nearer its loins, than the horse does; but modes of expression to which a language is once habituated, are permanent.—The last clause, *Thou hast caused men to ride upon us*, expresses what is the fate of the horse, when once bestrode by his rider; namely, that he becomes altogether subjected to his power. And the sense of the whole passage is, *Our enemies treat us like horses, which are first broke, and then put to every servile employment.*

II. 13. I have yet to notice by the way, another circumstance connected with the foregoing remarks on the subject of horse-breaking. The xxxiid. Psalm employs, to express the object of the bridle and bit, the word (בלם) *Balam*, which properly signifies what is done to the camel or buffalo, to render them manageable, viz. *boring their nose, and putting a ring in it*; at least, in 2 Kings xix. 28. in the Syriac version, it is put for such a nose-ring. I doubt, however, if any such plan was ever used with horses; and at any rate, it would not be *bridle and bit*, of which the Psalmist is here speaking. I therefore think, that the

word which the Hebrews formerly applied to their accustomed management of camels and oxen, was still retained, when they became acquainted with horses, and is in this passage employed in that change of signification: so that we here still recognize a people, previously accustomed to other beasts of burden than horses.

It is to be observed, before we conclude our remarks on this *second period*, that we have yet no accounts whatever of the existence of horses in Arabia. Of the Midianites, and some other Arabian peoples, we can say with certainty that *they* had none. When the Midianites, in the time of the Judges, made yearly incursions into Palestine, we are told (Judg. vi. 5.) *that they and their camels were past numbering*; and in chap. viii. 21. we find even their kings riding on camels.—In the reign of Saul, the two tribes and a half beyond Jordan, carried on a war with four Arabian nations, of which the best known are the Itureans, and the people of the country of *Heger*, or *Hedscher*, on the Persian Gulf*. The Israelites were victorious, and their booty consisted of 50,000 camels, 250,000 sheep, 2000 asses, and 100,000 slaves. No horses are mentioned, and therefore we must infer they had none.

THIRD PERIOD.

III. 1. WE now come to the *third period*, which extends from the reign of Solomon, to the destruction

* See my *Hist. Belli Nesibeni*, § 9. in my *Commentationes Societatis Scientiarum, per annos 1763—1768, praelectæ*, p. 78.

of Jerusalem by Nebuchadnezzar, and in which we find horses becoming always more and more common. Solomon himself established a body of cavalry, which, for a beginning, was pretty considerable, (1 Kings v. 6. (or iv. 26.) x. 26. 2 Chron. i. 14. ix. 25.) for it consisted of 12,000 horsemen, besides 1400 war-chariots; and that for a king, who had to purchase all his horses from a foreign country, was certainly a great number; but still it was very far inferior to the Egyptian cavalry-force of those times, which, when Pharaoh-Shishak invaded Palestine, in the reign of Solomon's immediate successor, amounted to no less than 60,000 horsemen, and 1200 war-chariots. It is, however, remarkable, that we never again find the Israelites so victorious or redoubtable in war as before, after the introduction of cavalry by Solomon. David was formidable with infantry alone. After various vicissitudes of fortune, he always terminated his wars successfully, and conquered provinces, or, more properly speaking, kingdoms, which his *son* Solomon, with all his cavalry and chariots, again lost; and his *grandson* was compelled to submit to the Egyptians. Could confidence in a cavalry-force, adopted in imitation of their enemies, and in the superiority usually ascribed to the trooper over the foot-soldier, have contributed in any measure to the degeneracy of the Israelitish infantry? This is not seldom the consequence of proceeding on such an idea; and it is a very great misfortune for a state: for the nation that excels in steady infantry, is generally victorious; although, indeed, cavalry serves to make a victory easier and more complete. But if such *was* the case,

that law of Moses (Deut. xvii. 16.) which prohibited the king from keeping too many horses, becomes even more justified by the event, than, in a former part of this work (Art. LIV. No. 5.), I ventured to hope. Thus much is certain, that, from the time of Solomon, the Jews and Israelites were never again formidable in war, until the destruction of their state; the fragments of which, they seem to have defended with sufficient valour, under Zedekiah. The æra of their victories ended with David; nor did it again commence earlier than the age of the Maccabees, during which, indeed, they far surpassed all the achievements of their ancestors, under David; for a more valiant people were scarcely ever seen, than they shewed themselves under Judas Maccabæus, and his brethren. But *then*, let it be observed, they again fought on foot.

III. 2. Solomon adopted the Egyptian plan of stationing his cavalry and war-chariots all together in cities, where stables were built for their accommodation, as we gather from 1 Kings x. 26. 2 Chron. i. 14. ix. 25. But in regard to the number of these stables *, a gross error must have been committed in transcription; for in 1 Kings v. 6. (Eng. Bib. iv. 26.) they are made 40,000; and in 2 Chron. ix. 25. only 4000.

* Hebr. אָרוֹת. The word occurs in Syriac and Arabic, in the same signification of *stables*. To get quit of the difficulty attending the larger number, 40,000, some wish to convert them from stables, to stalls for single horses, (*Bocharti Hierozoicon*, i. p. 155.); but the other difficulty still remains unobviated, because even of these, we should in one passage have 40,000, and in the other, only 4000.—Besides, the enumeration of *stalls* appears to me rather improbable.

The smaller number, however, is manifestly entitled to preference, and, in fact, I should be satisfied with a number still less. To me, 4000 is almost as suspicious as 40,000; and 400 such stables as Homer describes at Thebes, would have been quite sufficient for Solomon's cavalry, had even each of his 12,000 troopers had five horses. I have even some doubts as to the accuracy of the numbers of both Solomon's and Shishak's war-chariots. But I have no means of correcting the mistakes in either case.

III. 3. That Solomon's officers delivered out for the horses, not oats, of which the ancient authors knew nothing, but *straw and barley*, (1 Kings v. 8. Eng. Bib. iv. 28.) is scarcely worth notice, and belongs rather to the history of corn. But the food of horses in Barbary*, Arabia†, and many other southern countries, is the very same at this day. In this same passage, a distinction seems to be made between two sorts of horses kept by Solomon, the סים and the רכש‡; but wherein it consisted, I cannot discover.

III. 4. It is, however, of more importance to take
H h 4

* We learn from *Dr. Shaw's Travels*, p. 138. that oats are not cultivated by the Arabs; that the horses are there fed with barley and straw; and that, in the holy land, neither grass nor hay being raised, straw is there the usual food of horses.

† See Niebuhr's *Arabia*, p. 151.

‡ Some have been inclined to make רכש *mules*; but *Bochart* has sufficiently refuted this idea in his *Hieroz.* i. 241.; and in my opinion, the circumstance of its signifying a *horse* in Syriac, is a farther argument against it. That opinion I here give, as the result of other enquiries, being averse to enter farther into philological controversy here, out of regard to the majority of my readers.

some notice of Solomon's trade in Egyptian horses, of which he seems to have enjoyed a very profitable monopoly; 1 Kings x. 28, 29. 2 Chron. i. 17. His own horses he undoubtedly had from Egypt; but he besides let his merchants import Egyptian horses for the Hittite kings, that is, those of Northern Phoenicia. The price was fixed without any regard to their peculiar qualities, at 150 shekels for a horse, and 600 shekels for a set of chariot-horses; which shews, by the way, that they then yoked even four horses together in a chariot. The fixing the price has likewise altogether the look of a monopoly, and indicates, besides, that horsemanship was in its infancy; for whenever people have sufficient knowledge of horses, with all their combinations of faults and excellencies, and learn to judge of them as amateurs, one individual of the very same breed, will, perhaps, be worth ten times as much as another, particularly in a king's stables.—The situation of Palestine rendered the maintenance of the monopoly easy; for they could not be transported from Egypt by land, without touching Solomon's territories: and to have carried them by sea from Egypt to Phoenicia, could not answer, for two reasons. In the *first* place, it is very expensive to transport a horse on shipboard, because he must be slung, or suspended, to prevent his hurting himself, and even then he will sometimes meet with accidents. In a preceding part of this work (Art. LIX. foot-note), I have remarked, that in the year 1756, when troops were transporting from Germany to England, the English, to be free of the transport of horses, offered for each horse, L.12 sterling, (72 rixdollars) for which

the German officers might have bought horses in England, but the latter would not accept the offer. And yet the English probably understand that operation much better than the ancient Phœnicians*.

In the *second* place, the policy of Egypt was extremely hostile to commerce, especially by sea. Strangers were prohibited from approaching the coast; and the establishment of a fortress at the place where Alexandria now stands, together with the want of good harbours along the rest of the coast, effectually put a stop to trade, thus discouraged by the government.

III. 5. How it happened that the Egyptians departed so far from their usual policy, in the case of Solomon, as not only to permit him to trade with them, but even to export horses, important as they were to the security of the country on its Asiatic frontier, is a difficult problem to solve; for the sovereign of those territories which Solomon possessed, must have been a dangerous neighbour for Egypt†. Of the more immediate

* By the way, the great transports of cavalry sometimes mentioned by the writers of antiquity, appear to me very suspicious; for instance, that the Persian fleet sent by Darius against the Athenians, conveyed 200,000 infantry, and 10,000 cavalry, as Cornelius Nepos mentions in the life of Miltiades, chap. iv. I cannot believe; because for the transportation of such an army, the whole maritime force of England, the greatest, perhaps, that the world has ever seen, would not be sufficient. Terror at first, and vain-glory afterwards, may have made the number of the Persians, in the eyes and in the annals of the Athenians, tenfold greater than it really was; for 20,000 foot, and 1000 horse, would have been a large transport.

† We are very much mistaken, if we consider the natural strength of Egypt as almost infinitely superior to that of the Israelitish mo-

circumstances of the permission, we are ignorant, excepting only that Solomon, by his marriage with a princess of Egypt, became closely allied to the royal family ; but with all this, it must have cost considerable pains to bring even his father-in-law to grant a favour, apparently so dangerous in its tendency to the safety of his dominions.

III. 6. When we recollect that the northern Canaanites, from the time of Joshua to that of David, most probably had their horses from Armenia, it naturally becomes a question here, why they were not now contented with these, but purchased Egyptian horses from Solomon ? Probably the Egyptian breed was, in general, better than the Armenian ; to which we must add this peculiar circumstance, that in Armenia the horses ran wild, and required to be caught. Now wild horses are no doubt sprightly and fleet, but smaller and less strong than those bred in regular studs. On this account they are preferable for hussar horses, but not for heavy cavalry, or for equipages ;

narchy. Egypt, properly so called, which is overflowed by the Nile, and cultivated like a garden, is long, but narrow ; extending, by D'Anville's calculation, over the space of but 2100 French, or 800 German square miles. I have indeed remarked, in my preface to *Abulfeda*, that to this we must add some other fertile districts, and that even the deserts were not wholly without inhabitants ; but with all this, unless particular circumstances take place, it is by no means so very powerful, as to prove an overmatch for a king of Palestine, whose dominions reach to the Euphrates. Nor have its inhabitants, but rarely, displayed equal valour to other nations. Its shining achievements in war have been but few ; notwithstanding its greatness in the arts of peace rendered it so much the wonder of the world.

and in action, they would make but a sorry figure, opposed to such cavalry.

III. 7. From the history of Solomon's trade in horses, it appears a just inference, that Arabia was not at this period renowned for its horses, else would he have preferred getting Arabian horses; and the Hittite kings have also got theirs from the same quarter, rather than have encouraged his monopoly, and purchased Egyptian horses from him at his own price.—But of this point more in the sequel.

A passage in 1 Kings x. 28. and 2 Chron. i. 16. (although our attempt to illustrate it should fail), merits our particular notice, on account of the word מקוה or מקוא, which seems to indicate yet another country whence Solomon purchased horses. Probably it was the ancient African country of horses, from which Egypt itself originally received them. The different explanations of the word, which may be found in *Bochart*, (*Hieroz.* i. p. 171, 172.) and *Matthias Frederic Beck**, the reader will have no desire to see repeated here. It has been rendered *webs*, *tribute*, &c. &c. In my opinion, no translation of the word is admissible; for I agree with the Vulgate, which renders it *De Coa*, in considering it as the name of a country. But where shall we find the land of Ko, or Ku, or Kavva, or Koa? for in these different ways, according as the vowel is altered, may it be expressed; not to mention, that if, with *Bochart*, we take the ך not for a preposition, but a part of the word, it be-

* *Paraphrasis Chaldaica Chronicorum*.—See the Note on 2 Chron. i. 16. p. 7,—10. of Part II.

comes Mikva, or Mekova. Various conjectures have been hazarded on this point, some of which are mentioned by Bochart; as, for instance, 1. That some have suggested it might be Kus in Egypt*, which, however, can hardly be right; because the name of that city, which was indeed very celebrated as a place of trade, is written קִּי; and, 2. The Syriac translator makes it a city, *Aphelia*; and from him, the Arabic, *the city of the south*; both probably conceiving קִּי to be the *meridian*. Bochart himself once referred it to Troglodyte Egypt, which, according to Pliny, the ancients called *Michoe*; *Troglodytice quam prisci Michoen, alii Midoen, dixerunt*, lib. vi. § 34.; and this is no inconsiderable conjecture. Beck, and the Vulgate, point at *Coa*, *Kwa*, which Ptolemy (p. 156.) mentions as a city of Arabia Felix; and if they are right, Solomon bought horses in Arabia, as well as Egypt; or at any rate, Arabia *Felix* had ere *then* learned the art of breeding horses, and probably from the Abyssinians; for the king of *Cush*, that is, of Abyssinia and Arabia Felix, had, in Asa's time (2 Chron. xiv. 8.) *three hundred chariots*; although, indeed, in ver. 14. no horses are mentioned among the spoils carried off by the Jews. But to me it does not appear probable, that these horses could have come from a city so very little known, as this Arabian *Coa*, and particularly, as it must have stood on the coast of the most distant

* As we have so few geographical accounts of Egypt that are really useful, I must, on this occasion, where something depends on the knowledge of the particular city in question, refer to an Arabian authority, viz. Abulfeda's *Description of Egypt*, p. 13, 14. of my version, and p 76,—78 of my Notes.

part of Arabia. And besides, if Solomon had really received horses from Arabia Felix, I should have expected to have found earlier mention of *Saba*.

III. 8. Amidst such a variety of conjectures, if I might hazard one that has occurred to me, may not (קִי) *Ku* be the kingdom of Kuku in the interior of Africa, on the south-west of Egypt*, described by the Nubian geographer, (Clim. I. sect. 3.p. 13.) who expressly states that *the inhabitants had horses and camels?* In this case, *Ku* might be the country whence Egypt itself originally received its horses. But all this does not amount to more than a mere *perhaps*.

III. 9. Egypt, to which I will now bid adieu, has ever since the time of Solomon, maintained its celebrity for breeding horses. Against his son, Rehoboam, we find Shishak, king of Egypt, as mentioned above, bringing into the field 60,000 cavalry. In Isa. xxxi. 1, 2. xxxvi. 9. Ezek. xvii. 15. it is spoken of as the land, in whose horses the people impiously put their trust; and in the prophecy which Jeremiah (ch. xlvi.) uttered concerning the great battle which Pharaoh-Necho was to lose at Carchemish, the Egyptian cavalry are particularly noticed. In the time of Cyrus, they were still renowned for their valour, as Cyrus himself experienced†; and even to the present day, Egypt, according to Dr. Shaw (p. 166.), is distinguished for the excellence of its breed of horses; so that it is but needless labour to enquire, with some,

* See Hase's Map of Africa, lat. 24. long. 42. from the meridian of Ferro.

† See Xenophon's Cyropædia, Edit. Hutcheson, lib. vii. p. 484, —492.

into the causes of its rapid decline in this respect, or to frame conjectures to account for what is not true.

III. 10. Solomon, in his writings, mentions the horse, but not oftener than David. His words, in Prov. xxi. 31. *The horse is kept ready for the time of war; but victory cometh from God*, are nearly to the same purport as those of his father, in several of the Psalms; but with this difference, that the horse is now no longer a hostile, but a domesticated animal. In Prov. xxvi. 3. *The whip for the horse, the bridle for the ass, and the rod for the fool's back*, is manifestly an error of the transcriber; for the author must certainly have written, *The bridle for the horse, and the whip for the ass*.—In the Song of Songs, which is undoubtedly the work of Solomon, but not therefore necessarily a canonical book, the lover pays his fair one a compliment, which among us would appear very strange: He compares her (chap. i. 9.) to his *mare in Pharaoh's chariot*, or *among Pharaoh's horses*; for a doubt may arise as to the true translation here. But thus much we clearly see, that chariots and horses were, at the period when this love-song was written, newly introduced from Egypt; and by reason of this novelty, these noble animals were then still nobler than at present. A modern jockey would, perhaps, inform his friend of his wife's delivery, by writing him in the language of the turf, that *his mare had foaled*; indeed I actually steal this phrase from the letter of a person of quality, who does not know that I had seen it. But in a tender amatory poem, such an expression would now be utterly inadmissible.—Whether the book of Ecclesiastes was really written *by* Solomon, or

only under his name, like the *Cato* and *Lælius* of Cicero, I do not here inquire ; but it appears from chap. x. 7. that to ride on horseback was a mark of distinction.

III. 11. In the times subsequent to the reign of Solomon, we find horses both among the Jews and Israelites ; but still commonly for warlike purposes, as, for instance, in Amos iv. 10. I will not trouble the reader with a numerous collection of proof-passages, because, being once introduced, this was an obvious course. I will merely notice some of the more remarkable ones, which belong to the time of Isaiah.

III. 12. Under the reign of Uzziah (who, as we learn from 2 Chron. xxvi. 9,—15. was the author of various other warlike institutions), and that of Jotham his son, a very great number of horses must have been kept ; for in a prophetic threatening denounced by Isaiah, as I think, in the reign of Jotham *, against idol-worship, and the *mania* of ascribing all the success of the people to the greatness of their military establishments, the prophet (chap. ii. 7.) has these words, *Their land is full of horses, and of their cavalry there is no end.* This illustrates another passage, which has long remained obscure. It is generally

* The reason why I place this prophecy in the reign of Jotham, and not of Uzziah himself, as others do, is, that Isaiah takes the text of his sermon, if I may so speak, from the prophet Micah, who only began to prophecy under Jotham. See Mic i 1. and compare iv. 1,—4. with Isa ii 2,—4. Those to whom this reason may be unsatisfactory, I entreat to have patience until my German version reach the book of Isaiah, which, if I live, will be, I hope, in the beginning of 1778.

well known (and those who know it not we may refer for information to *Paulsen's (Ackerbau der Morgenländer) Oriental Husbandry*, p. 110,—126. with the frontispiece) that the eastern nations thresh out their corn, either with the wheels of threshing waggons, or with oxen driven over it, so as to tread it out. Now Isaiah, in chap. xxviii. 28. says, *We grind the wheat, and thresh it not: we roll the waggon-wheels upon it, and ride horses over it; but still so as not entirely to crush it.* Hence it appears, that at this period, the keeping of horses was become so general, as that they used them in husbandry, or, at any rate, for threshing. Those who have never seen them so employed, may, perhaps, be inclined to doubt, how far it is really practicable.—But there is no doubt of the fact. One of my pupils, a native of Hungary, on hearing my illustration of this passage in my lectures, informed me, that to him, threshing with horses was an operation quite familiar; that little boys mounted them, and rode about among the heaps of corn brought together.—In Barbary too, Dr. Shaw tells us, that they thresh with horses*; and we find that the same practice prevails among the people between the Don and the Wolga†. Jerom, who appears to entertain no doubt of the fact in general, yet objects, in the instance of Palestine, that from their having no horses, it is not applicable. His words are, *Quidam volunt ex eo quod ungulas et equos nominavit, ostendi equorum greges, qui ad terenda frumenta areis immitti*

* See his Travels, p. 138, 139.

† See the Gottingen Literary Notices for 1775. Appendix. No. 9. p. lxix.

soleant ; sed non poterat Scriptura dicere, quod Judæa provincia non habebat. But this objection, while it shews the learning and acuteness of Jerom, vanishes, when we discriminate the periods of the history. If, under Uzziah and Jotham, *the land was full of horses*, they might naturally enough be employed in threshing: nor would this be a useless exercise even for cavalry horses in time of peace: for, in war, they must often charge, where the obstacles are as great as heaps of corn collected for threshing. On ground perfectly smooth, and where no stubble obstructs his way, a horse can never be broke to any purpose.

III. 13. I look upon Isaiah as the first of the Hebrew writers who distinguishes the colour of horses. Zachariah indeed does so, more fully, in two well known passages, i. 8. and vi. 2, 3 ; mentioning four different colours of them : but then he belongs not to this period, for he flourished in the time of the Persians, who were a nation of horsemen. His beholding horses and chariots in his vision, giving chariots to the winds wherewith to traverse the world*, and distinguishing the colours of the horses so accurately, are all proofs of the period in which he wrote. But to return to Isaiah. The passage of his prophecy to which I allude, is chap. xxii. 6 ; *בִּרְכַב אֲדָם יִרְשִׁים*, strangely enough translated (*Auf menschen-Pferdensind Reuter*) *riders on men-horses*. What idea this can convey, it is hard to say: but various have been the attempts

* Chap. vi. 1—8.—See my *Oriental. Biblioth.* part viii. p. 157.

to explain it. We can only wonder, that it occurred to nobody, that אָדָם, pronounced *Adom*, would, with equal propriety, signify *red*: and then the sense would be plain, *riders come on red horses*. To horses of this colour we apply the term *Füchse* (*fox colour*); which, however, I do not venture to adopt in my German version, because to people unacquainted with horses, it conveys an odious misconception, which *Mr. Rambold* would not fail to abuse in his Review.

III. 14. Habakkuk, whose time we do not precisely know, but who imitates Isaiah, and seems to have flourished later, is the first writer who gives horses to the chariot of God, chap. iii. 8. Prior to this period it was furnished with Cherubs*, that is, a sort of Sphinxes, which are not animals actually existing in nature, but an imaginary compound of a man, a quadruped, and a bird. These Sphinxes, which have altogether the appearance of Egyptian origin, were, according to mythology, the most ancient drawers of the thunder-chariot of God; and in the *sanctum sanctorum* of the Israelites they denoted the presence of the invisible God, who wields the thunder-bolts, abiding above them. Ezekiel has also put such sphinx-like Cherubs in God's thunder-chariot. But Habakkuk converts them into horses, with which he was better acquainted, and says—just as a Greek or Roman would have said, and as I, a German, must say in my version—*Thou mountedst thy horses, and thy chariots were victory*.—We see plainly, from chap. i. 8. that the Chaldeans, whose first irruption from the north,

* See my *Comment. de Cherubis*.

he probably lived to witness, were extremely formidable by the strength of their cavalry.

III. 15. In this period horses cannot have had iron shoes, else what Isaiah says, chap. v. 28. of the Assyrian horses, that *their hoofs are like flint*, would have no meaning. But this remark belongs to the Essays on Horse-shoeing, which *are said* to be included in the *Third Part of the Transactions of the Antiquarian Society of London*; I must use the expression, *are said*, because I have not seen that part, and only know it from reviews, made at second hand from other reviews.

III. 16. The last circumstance relating to this period, worth notice, is, that, at its very conclusion, in the time of Ezekiel, who lived in the reign of Nebuchadnezzar, the Tyrians bought their horses from Armenia*. This shews, that the trade in horses with Egypt had ceased after Solomon's time: and that Arabia was not then, in respect to horses, what it now is; and had either no breed at all of its own, or at least but a bad one, not to be compared with the Armenian.

ILLUSTRATION OF A PROPHECY OF ISAIAH.

IV. 1. I SHOULD here stop; because the only remaining remarkable passage of Isaiah, chap. xxi. 7. is not historical, but prophetic, and, besides, relates to a period posterior to that which limits my present

112

* See Ezek. xxvii. 14. and my *Spicil. Geogr. Hebr. ext. I.* p. 75,—78.

Essay: but it is such an exquisite piece of painting, and so historically true, and yet has been so little understood, by reference to historical documents, that I should deprive my readers of some gratification, were I to exclude it. It relates to the conquest of Babylon by Cyrus, and, of course, to the very year, in which an increase of light is thrown on profane history, where before there was much obscurity, perplexity, and chronological irregularity. To the prophet, who previously announces the destruction of the Babylonian empire, the impending fate of Babylon is displayed in a vision, by a watchman, whom, by order of the Lord, he had stationed on a lofty tower, to keep watch, and who beholds *chariots, horses yoked, or saddled, a train* (might I say—a cavalcade?) *on asses, and a train on camels.* A truer picture of the first campaigns of Cyrus, as they must have appeared to a person unaccustomed to such a sight, cannot be conceived. That he had war-chariots, which were armed with scythes—that he had also cavalry, and that in these two the strength of the Persian military force consisted, every one acquainted with ancient history will know; indeed, as Xenophon relates, this was soon manifested in the great and decisive battle, in which Cyrus vanquished Croesus. But then, what mean the camels? Cyrus had had *them* also in his army at first, although they were afterwards disused by the Persians. Immediately before the engagement with Croesus, he said to his troops*, *Ye see, that the enemy's cavalry are posted in his rear. Let*

* *Xenoph. Cyropæd.* edit. Hutchinsoni, p. 481.

our camels but approach them, and you will see good sport. The order was obeyed, and, in the note, p. 483. of the book just quoted, its effect is thus stated :—
 “ Artageses attacked the enemy on the left wing, and
 “ in such a manner, as that, in conformity to the order
 “ of Cyrus, the camels preceded him : but the horses
 “ no sooner saw them, than they became restive and
 “ disordered, rearing and running off, while they were
 “ yet at a considerable distance, as horses usually do
 “ at the sight of camels.” Now Xenophon himself observes, p. 493. that, *in this engagement, it was manifest, that the strength of the Persian army lay in its cavalry, and hence, until his time, it was maintained in the very same equipment and discipline, which Cyrus had established : and so were likewise the scythed chariots.* But, continues he, *the camels did nothing more than scare the horses ; and thereby no blood was shed on either side, because the horses fled too far : and though this was of some advantage on that occasion, the consequence has been, that now no brave man has any desire to be a camel-rider ; and the camel is degraded to be a beast of burden for the baggage.* What Xenophon, who certainly deals not in fiction, but has more regard to facts than any of the Greek authors, here says of the camel, is true ; but he did not know the whole extent of the truth, as to this part of the animal's history ; which, indeed, was not ascertained, until long after his time, in one of the great Roman battles. The horse, while unacquainted with the camel, no doubt, *is* scared at him, and runs off : but, once accustomed to see him, this is no longer to be dreaded, and then the camel becomes quite useless in battle.

A trooper must have weapons for cutting : for he can seldom do much execution by shot, or thrust : but the long neck of the camel, and his unwieldy bulk, renders the sabre useless. In the battle of Magnesia, Antiochus had several thousand Arabs mounted on camels, of whom Livy (lib. xxxvii. c. 40.) gives this description : *Ante hunc equitatum, falcatae quadrigae, et cameli, quos appellant Dromadas. His insidebant Arabes agittarii, gladios habentes tenues* (small swords) *longos quaterna cubita, ut ex tanta altitudine contingere hostem possent.* Swords of such a length cannot be properly managed by a rider : and even the spears of the *Hulans*, which they fix to their foot, level, and then charge, have not produced the effects which were expected from them : indeed, in the battle of Hohenfriedburg, they had a very bad effect.

IV. 2. The asses of the vision yet remain to be noticed. That Cyrus had riders mounted on asses, Xenophon does not mention : but it is very probable : the people of *Caramania*, an extensive province of Persia, made use of asses in war, instead of horses. Strabo (lib. xv. p. 1057, or 777.) says, *Even in war they mostly use asses, by reason of the scarcity of horses ; and they also offer them in sacrifice to Mars, whom alone, of all our gods, this warlike people reveres.* Asses have the same effect on horses, that Xenophon mentions of camels. At the sight of an ass, a horse becomes frightened and restive, and runs off : but this, in general, only, as may be conceived, when the sight is new ; although, indeed, some horses are never entirely cured of their aversion, even in countries where they meet asses every hour. Of this circum-

stance the Persians once availed themselves, as a stratagem, to beat the Scythians, an Asiatic people, that lay upon their northern frontier, and were an overmatch for them in cavalry. The ass is an animal of southern climates, and gradually disappears towards the north. This Scythian people had cavalry, but no asses : and their horses being, of course, unacquainted with them, whenever the Persians advanced, were scared at the sight. Herodotus relates the story in book iv. chap. 29. Had Darius brought asses into the field, there can be no doubt, that they would have been in the army of Cyrus.

PARTICULARS RELATIVE TO THE HORSE IN ARABIA.

V. 1. FROM all that has been said it follows, that Arabia is any thing but the *original* country of horses, and that, for a long period, it was absolutely destitute of them. The animal that may be called peculiarly its own, and is pre-eminently suited to a desert country, from its wonderful capacity of bearing hunger and thirst, is the camel ; which, as a beast of burden, forms the true riches of Arabia, and has, on some occasions, made it the *central point* for the commerce between Asia and Africa, India and the West. One of the routes which the East India trade may take, (there are properly *five*, and that presently in use is the most circuitous) is across the Persian Gulf, and thence by land, through the Deserts of Arabia or Syria, to a port in Syria or Palestine. This route it partly took in the first century of the Christian era, and so was the cause of the rapid greatness and power to which

the city of Palmyra arose, though situated in the desert. By means of the camel, goods can be cheaply transported across the deserts. For the marauder too, who assaults and rifles the solitary traveller, it is extremely serviceable ; and, of course, for that petty sort of warfare, which the petty tribes of Arabia usually carry on, and where they rather skirmish, in the hussar style, than come to close and regular action. But it becomes quite contemptible, when opposed by cavalry accustomed to it, or, as at Magnesia, by Roman infantry. Hence, even for Arabia, it is no longer serviceable, in a military point of view, than while the seat of war continues within its own confines and deserts, where a foreign enemy could hardly bring a strong body of horse.

V. 2. It is worth observing, that the use of the camel in war among the Arabs, has had an influence on their language, which serves to distinguish it from Hebrew. *Racab* (רַכָּב) in Hebrew, means *to ride*, and *that* on any animal, whether horse, ass, or camel : and in Arabic, it, no doubt, has the same latitude of signification, when not standing antithetically : but it has, besides, a certain peculiarity of signification, (namely, *to ride on a camel*) of which, to a person unacquainted with that language, I cannot better convey a proper idea, than by means of the following translation of a verse of an Arabic poet, (to be found in p. 41. of my *Arabic Chrestomathia*, or p. 78. of the preface of my *Arabic Grammar*, which is printed by itself, and treats of the poetical taste of the Arabians.) *But I prefer the people, who are furious in attack, whether mounted on the horse, (Fursan) or the camel.*

(Rucban). This shews that the Arabs became acquainted with horses at a much later period than the Israelites ; because the word common to both peoples, that signifies *to ride*, was, when necessarily to be contradistinguished from *riding on horseback*, by them limited to *camel riding*.

V. 3. With the accounts relative to the want of horses in Arabia, which we derive from the Bible, *Strabo* accords, and informs us besides, that even in his time (and he lived in the reigns of Augustus and Tiberius, much about the æra of Christ's appearance) that country was still without them ; and concerning Arabia-Felix, in which, from its connection with Abyssinia, I should certainly have conjectured that we should have found them earlier, he says, (p. 1112. or 768.) *it has neither horses, mules, nor swine ; and as to Arabia-Deserta, (p. 1130. or 784.) it has no horses, and camels supply their place.*

V. 4. In *Nuweir*, it is true, an Arabian historian edited by *Schultens*†, we find (p. 50, 51.) that *Homeir*, a king of *Yemen*, who is said to have been cotemporary with Kedar, the son of Ishmael, and therefore with Jacob or Esau (indeed he has this in common with Esau, that their names, *Edom* and *Homeir*, both mean *red*), was the best *rider* of his time ; and the very word is used, that denotes only *a rider on horseback*. But unfortunately, this evidence is some thousand years too young, and may therefore be dismissed at once.

† In a book without beginning or end, which I have described in Part IV. p. 142,—160. of my *Biblioth. Oriental.* under the title of *Monumenta antiquissima Historiæ Arabum.*

V. 5. We read, in Josephus' account of his own life, § 23. (and he lived not long after Strabo), that there came to him two principal *Emirs*, whom I look upon as Arabians, bringing with them *horses, arms, and other necessities*, for the war against the Romans. But then they were not of Arabia itself, but of *Trachonitis*, which is counted as a part of Syria, and besides, lies on this side the Syrian Deserts. So that here again, the objection vanishes.

V. 6. I cannot trace at what period after Strabo's time, or from what breed, the Arabians may have had their first horses; but thus much is certain, that they very rapidly improved it, and, perhaps unconsciously at first, took measures for having the best horses in the world. Even while heathenism prevailed among them, that is, before the time of Mahomet, their poets speak of horses and riders in such terms as to shew that the horse was well known among them. Niebuhr relates (p. 161. of his *Arabia*), that the pedigree of the good Arabian horses is said to be on record for 2000 years back; which, if true, would shew that Strabo was wrong, in denying their existence there in his time. But any such Arabic tradition, particularly as it relates to chronology, is not to be compared with the written testimony of a Strabo; and besides, Niebuhr saw the best horses belonging to Arabs, not in Arabia itself, but between Basra, Merdin, and Syria. He relates, that they deduce the genealogy of their best horses, or *Kochlani*, from the stud of Solomon; which fable, while it is entirely in the Arabian style of ascribing every thing great to Solomon, whose memory they highly revere, forms, at the same time, an ac-

knowledge, that horses were in Palestine at an earlier period than in Arabia.

I am inclined to consider the spirit of horse-racing, an exercise in which the Arabs eagerly sought for renown, as the primary cause of that perfection which the art of horse-breeding so rapidly attained among them; but I by no means exclude soil, climate, and food, as contributing causes. Wherever racing is established, either as a source of fame or profit, good horses will be sought for, and the breed improved, in the first instance, by the best foreign stallions, and then by those home-bred ones, which shew the best qualities; and thus the country will by degrees acquire an excellent breed. For its unrivalled horses, England is principally indebted to the expensive, yet in this instance, beneficial folly of the turf: for such costly Arabian stallions would not, at so very great additional expense and risk, be brought round Africa by sea to England, did not the jockeys know, that if lucky in their choice, they are sure, in the first place, to have horses that will bear a very high price; and in the next place, that will win them great sums on the turf. That racing was introduced among the Arabs, very soon after they began to breed horses, appears from the very names of the coursers. Ten horses are started together, and every one of them, from the victor to the last, has its own proper name, or epithet. One of their best scholiasts, who, from the city Taurus, is called *Taurizi*, or *Tabrizi*, enumerates them in the following manner.

1. The first, or victor, is called *Sabek*, the foremost, or *Mudschalli*, the inspirer of joy, and banisher of

care, because his master can behold the race with delight, and without concern.

2. *Mutzalli*, because he has his head on the back of the first.

3. *Musalli*, because he satisfies his owner.

4. *Tali*, or the pursuer.

5. *Murtach*, the ardent, or mettled.

6. *Atif*, the keen, or well-disposed.

7. *Muvaimnal*, the promising, or inspirer of future hopes.

8. *Hadi*, the lazy.

9. *Latim*, the belaboured, because taken into the stable with blows.

10. *Sucait*, or whose name is not to be named, and of whom nothing is said, because the case is too bad.

These names were so well known in Arabia, that their poets use them figuratively ; as, for instance, in that poem which is reprinted in p. 78, 79. of my *Chrestomathia*, and in a Note on which it is, that *Tabrizi* gives the above names of the coursers, we find these lines : *We are the sons of Naschsäll : we desire no other father, and he no other sons. Wherever a race for glory is run, you will find the Sabek and Mutzalli of our line.* No German poet would sing in this strain, for we give no names to our racers, and many a poet among us, perhaps, never mounted any living animal : Nor would such, probably, be the style of an English bard ; for though in England they have races, and give names to the coursers, yet these will rarely be sufficiently known to poets, or their readers. What pains the Arabs take to preserve the best breed, and

with what watchful care a mare of that sort is covered, is mentioned by Niebuhr, p. 162,—164. of his *Description of Arabia* ; and we find also some remarks on this subject in *Arvieux*.

REMARKS ON THE HEBREW NAMES OF THE HORSE.

VI. 1. I now conclude this sketch with a few remarks on the two most common Hebrew names for a horse, which will, perhaps, serve to throw a new light on the early history of this animal.

It might be conjectured from the preceding detail, and it is partly true, that these names must be of foreign origin, and either such as the horse previously had among some other people, or else, the names of the country from which the Hebrews received him : Proceeding thence a step farther in the conjecture, it might be inferred that they must be Egyptian names, because in the Biblical history we first meet with the horse in Egypt. Here, however, we should be mistaken ; for, contrary to all expectation, the horse has no Egyptian name. The conclusion, therefore, is, that although before the patriarchs went down into Egypt, neither they, nor the southern Canaanites among whom they dwelt, had any horses ; yet still the horse was not quite unknown to them. He was, at least, known as a foreign animal ; and to the people whose language we find in the Bible, he had originally been made known by a people that were *not* Egyptian.

VI. 2. The most usual Hebrew name of the horse is *Sus* (סוס), which name he likewise bears in Samaritan ; and whoever understands the history of the

Oriental languages, will hence infer, that this was also the name given him by the Canaanites; or, as the Greeks and Latins call them, the Phœnicians. Among the Aramæans, or, as we now denominate them, Syrians and Chaldæans, the same name is in common use. But the Arabs, closely connected as their language in other instances is with the Hebrew, have it not; although indeed they have various words derived from it, of which the most remarkable is *Saais**, a horseman. Likewise the Arabic verb, *Saas*, properly signifies as a denominative, to break horses. What we find besides in *Goli*us, whose words I here give without alteration, relative to other meanings of this verb, *rexit pro arbitrio gregem subditosque, castigando subegit*, only flows from that signification, or rather, is nothing else than itself paraphrastically expressed.

The name *Sus* has really something of a foreign aspect. A rational derivation of it cannot so much as be found in the great storehouse of the Oriental tongues, which is the more singular, that in them, by reason of their peculiar structure, etymology is generally the easiest and clearest part. Bochart, it is true, imagined he *had* found one from the Arabic. *Sus*, says he, comes from the Arabic *Saas*, *regere, moderari*†; and he adds as examples, *Sas Elrakib*, *Equus moderatus est, equum suum*; and *Sias elehail*, *moderator equorum*; but from these very examples, it is more probable that *Saas*, to break a horse, was, on the contrary,

* The printer having no Arabic types, I can only refer to *Goli*i Lexicon, p. 1237.

† Hieroz. I. ii. 6. p. 96.

a denominative from *Sus*, a horse, and only afterwards used with a little more latitude of signification.

VI. 3. Considering the well known celebrity of the Persians in horsebreeding and cavalry, we cannot help wondering that no one should here have thought of *Susa*, the capital of Persia. But indeed we actually find that it had occurred to some of the authors quoted by Bochart *, who maintain, that *Susa* had its name from horses. This, however, I should hardly conceive ; because, to deduce the name of a Persian city from Hebrew, whether from *horses*, or, as others will have it, from *Lilies*, has to me much the same appearance of extravagance, as to seek a Hebrew etymology for our Göttingen. But, on the other hand, it may very probably have happened, that the Canaanites, whose language the patriarchs adopted during their abode in Canaan †, may, as well as the Syrians and Chaldæans, have taken their name for the horse from that province, which in the most ancient times might be most renowned for horsebreeding. If it be here objected, that in Hebrew the city is not called *Susan*, but *Schuschan*, as in Dan. viii. 2. Esth. i. 2. Neh. i. 1. ; I answer, that שִׁשָּׁן, according as the points are placed, may be as well pronounced *Susan*, as *Schuschan* ; and the points are much too modern to come at all into consideration here. It is also certain, that Abulfeda, in his description of Chusistan, writes the name of the city with a sharp S, *Sus*, which is exactly the Hebrew name for a horse.

* In the passage above referred to.

† The language which we call *Hebrew*, is, properly speaking, *South-Canaanitish*.

VI. 4. The other well known word for a horse, and for a horseman also, is פָּרָס; and I think these letters should be pronounced *Feres*, in the plural, *Ferasim*, in the former sense; and *Faras*, plural, *Farasim*, in the latter; just as in Arabic, a horse is called *Färs*, and a horseman, *Faris*. This word is still more emphatical in the history of the horse. It has neither Arabic nor Hebrew derivation. *Faras* means *to tear in pieces*; and hence the usual Arabian name of the lion. It may likewise signify *to break in pieces*; and I do not deny that a horse may break one's bones, when he kicks or strikes out backwards; but he could scarcely take his name among any people from such a circumstance. May we not then here also think of Persia? *Fars* is the name of that province which *was Persia* in the strictest sense; and it is at the same time the Persian word for a horse. Altogether probable, therefore, is the conjecture of many, that the term, *a Persian*, is exactly equivalent to *a horseman*, and that the people have been so called, because all persons of distinction generally rode on horseback. But even although this idea were abandoned (and it certainly does not amount to more than a conjecture), still it seems at any rate not improbable that the horse may have received the names of *Feres* or *Färs* among the Arabians and Hebrews, from the province in which this people first became acquainted with him.

VI. 5. It is true that in the patriarchal history we first hear of the horse in Egypt; but as he has no Egyptian name, we are led to conclude that the Canaanites, whose language Abraham's posterity adopted, must have previously become acquainted with him

among another people ; and, indeed, as his two names look so like Persian, that people can hardly have been any other than the Persians. And if so, we have discovered, in Asia, another original country of this animal.

V. 16. But I must observe, that, with this opinion, the accounts given by Xenophon, in his life of Cyrus, do not accord. In the very beginning of the first book of the *Cyropædia*, he tells us that young Cyrus was highly delighted, when he began to learn to ride at his grandfather's court : *for in Persia, at that period, a horse was rarely seen ; the mountainous nature of the country being unfavourable to horse-breeding and riding**. And in the fourth book†, he relates very circumstantially, how Cyrus converted the Persian troops from infantry to cavalry.—Xenophon is a very excellent writer, and in his *Cyropædia*, the whole style of the relation clearly shews, that he took his materials from Persian memoirs or traditions : for it has a very remarkable similarity to what we find in the native authors of Persia. But he is not, therefore, necessarily infallible. The Persians themselves, and especially their poets, might have ascribed too much even to the greatest man of their nation : for this is a fault into which historians are very frequently betrayed. Xenophon might, besides, have misunderstood their memoirs. Perhaps they only spoke of the mountainous districts of Persia, without meaning

* See *Hutchinson's* edition of the *Cyropædia*, p. 20, 21.

† ———, p. 272,—280. & p. 301,—303.

to insinuate, that there were neither horses nor cavalry in the intervening plains. There is, moreover, some appearance of improbability, in the sudden conversion of the Persian soldiers into horsemen, merely by Cyrus' distributing among them the horses that were taken from the Assyrians. They must, at first, not only have made, as Cyrus himself says, a ludicrous figure; but likewise have found themselves trying a dangerous experiment, if wholly unaccustomed to riding before; and the first charge they received, from a body of experienced cavalry, must have dismounted, and utterly overthrown them. No man will ever become a good and hardy rider, who has not practised horsemanship in his youth; and he who only learns to ride at the age of 30 or 40, will be, at best, but a middling rider. I certainly not such a one as to be capable of defending himself, and fighting on horseback. But I here decide nothing: deeming it sufficient to have pointed out the inconsistency which appears between the relation of Xenophon, and one very probable inference, that has been deduced from the Hebrew names of the horse.

END OF VOLUME SECOND.

BM646 .M6213 1814

Michaelis, Johann David, 1717–1791.
Commentaries on the laws of Moses /

39967003307985

BM646
.M53
1814
v.2

DOES NOT CIRCULATE

DO NOT
PHOTOCOPY

